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on behalf of herself and all others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

MARIA MENDOZA, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

NAYANA LLC., a California limited liability
company doing business as LA QUINTA
INN; AMIR PATEL, an individual, AMIT
PATEL, an individual, and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 20STCV21191

[Assigned to the Hon. Daniel J. Buckley in
Dept. 1]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: June 2, 2020
Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 ("Settlement" or "Agreement" or "Settlement Agreement") is made by, between and among
3 plaintiff Maria Mendoza ("Plaintiff"), individually and on behalf of the Settlement Class, as
4 defined below, on the one hand; and defendant Nayana LLC doing business as LA QUINTA INN
5 ("Defendant"), on the other hand, in the lawsuit entitled *Mendoza v. Nayana LLC*, filed in the
6 Los Angeles County Superior Court, Case No. 20STCV21191 (the "Action"). Plaintiff and
7 Defendant shall be, at times, collectively referred to as the "Parties." This Agreement is intended
8 by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth
9 herein, based upon and subject to the terms and conditions of this Agreement.

10 **1. DEFINITIONS**

11 A. "Action" means *Mendoza v. Nayana, LLC. et al.* filed in Los Angeles County
12 Superior Court, Case No. 20STCV21191.

13 B. "Aggrieved Employees" means Class Members working for Defendant during
14 the PAGA Period.

15 C. "Class Counsel" means: David D. Bibiyan, Jeffrey D. Klein, Diego Aviles and
16 Sara Ehsani-Nia of Bibiyan Law Group, P.C. The term "Class Counsel" shall be used
17 synonymously with the term "Plaintiff's Counsel."

18 D. "Class Period" means the period from June 2, 2016 through August 28, 2021.

19 E. "Court" means the Superior Court of the State of California for the County of
20 Los Angeles – Central District.

21 F. "Defendant" shall refer to defendant Nayana, LLC dba LA Quinta Inn.

22 G. "Employer Taxes" means employer-funded taxes and contributions imposed on
23 the wage portions of the Individual Settlement Payments under the Federal Insurance
24 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
25 and contributions required of employers, such as for unemployment insurance.

26 H. "Final Approval Date" means the later of: (1) the date the Court signs an Order
27 granting final approval of this Settlement ("Final Approval") and Judgment; (2) if there is an
28

1 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
2 have been filed, the date on which they have been resolved or exhausted.

3 **I. “General Release”** means the general release of claims by Plaintiff, which is in
4 addition to her limited release of claims as a Participating Class Member and Aggrieved
5 Employee.

6 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
7 Hundred Ninety Seven Thousand, Six Hundred Twenty-Five Dollars and Twenty-Four Cents
8 (\$197,625.24),¹ which shall be paid by Defendant within (14) days after Final Approval, and
9 from which all payments for the Individual Settlement Payments to Participating Class Members,
10 PAGA Payments to Aggrieved Employees, the Court-approved amounts for attorneys’ fees and
11 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
12 Costs, a Service Award to Plaintiff, and the payment made to the Labor and Workforce
13 Development Agency (“LWDA”) for resolution of Plaintiff’s cause of action for civil penalties
14 under the Labor Code Private Attorneys’ General Act, codified at Labor Code Section 2698, *et*
15 *seq.* (“PAGA”), interest and certain taxes shall be paid. It expressly excludes Employer Taxes,
16 which shall be paid by Defendant separate and apart from the Gross Settlement Amount.

17 **K. “Individual Settlement Payment”** means a payment to a Participating Class
18 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
19 which he or she may be entitled if he or she is also an Aggrieved Employee.

20 **L. “Individual Settlement Share”** means the gross amount of the Net Settlement
21 Amount that a Settlement Class Member is eligible to receive based on the number of Weekly
22 Pay Periods that he or she worked as a Settlement Class Member during the Class Period if he or
23 she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to
24 which he or she may be entitled if he or she is also an Aggrieved Employee.

25 **M. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
26 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
27

28 ¹ As the same may be increased in accordance with Paragraph 16, below.

1 from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and Zero
2 Cents (\$10,000.00) shall be allocated toward PAGA penalties ("PAGA Payment"), of which
3 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA
4 (i.e., the LWDA Payment) and Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00)
5 will remain a part of the Net Settlement Amount for payment to Participating Class Members on
6 a *pro rata* basis.

7 **N. "Net Settlement Amount"** means the portion of the Gross Settlement Amount
8 that is available for distribution to Participating Class Members after deductions for the Court-
9 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
10 of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
11 Payment, and the PAGA Payments.

12 **O. "PAGA Payment"** is the payment made to Aggrieved Employees in addition to
13 their Individual Settlement Share.

14 **P. "PAGA Period"** means the period from June 2, 2019 through August 28, 2021.

15 **Q. "Participating Class Members"** means all Settlement Class Members who do
16 not submit a timely and valid Request for Exclusion.

17 **R. "Parties"** shall refer to Plaintiff and Defendant collectively.

18 **S. "Plaintiff"** shall refer to Plaintiff Maria Mendoza.

19 **T. "Preliminary Approval Date"** means the date on which the Court enters an
20 Order granting preliminary approval of the Settlement.

21 **U. "Released Parties"** shall mean Defendant and each of its past, present, and future
22 affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures and assigns,
23 and each of these entities' past or present directors, officers, employees, partners, members
24 (including, but not limited to, named defendants Amar Patel (erroneously sued as Amir Patel)
25 and Amit Patel), principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and
26 personal or legal representatives.

27 **V. "Response Deadline"** means the deadline for Settlement Class Members to mail
28 any Requests for Exclusion, Objections, or Weekly Pay Period Disputes to the Settlement

1 Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first
2 mailed in English and Spanish by the Settlement Administrator. The date of the postmark shall
3 be the exclusive means for determining whether a Request for Exclusion, Objection, or Weekly
4 Pay Period Dispute was submitted by the Response Deadline.

5 **W. "Request for Exclusion"** means a written request to be excluded from the
6 Settlement Class pursuant to Section 9.C below.

7 **X. "Service Award"** means monetary amount to be paid to Plaintiff of up to Seven
8 Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court approval, will
9 be paid out of the Gross Settlement Amount.

10 **Y. "Settlement Administration Costs"** means all costs incurred by the Settlement
11 Administrator in administration of the Settlement, including, but not limited to, translating the
12 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
13 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
14 associated taxes and withholdings, providing declarations, generating Individual Settlement
15 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
16 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys'
17 fees and reimbursement of litigation costs and expenses, to Plaintiff for her Service Award, and
18 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
19 related information, and any other actions of the Settlement Administrator as set forth in this
20 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
21 are estimated not to exceed \$6,000. If the actual amount of the Settlement Administration Costs
22 is less than \$6,000, the difference between \$6,000 and the actual Settlement Administration Costs
23 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
24 \$6,000 then such excess will be paid solely from the Gross Settlement Amount and Defendant
25 will not be responsible for paying any additional funds in order to pay these additional costs.

26 **Z. "Settlement Administrator"** means the Third-Party Administrator chosen by
27 Plaintiff that will be responsible for the administration of the Settlement including, without
28 limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement

1 Payments to be made by Defendant from the Gross Settlement Amount and related matters under
2 this Agreement.

3 **AA. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
4 all current and former non-exempt, hourly paid employees who worked in California for Nayana
5 LLC at any time during the Class Period.

6 **BB. “Weekly Pay Period”** means the number of weekly pay periods that a Settlement
7 Class Member was employed by Defendant, using hire and termination dates, in a non-exempt,
8 hourly position during the Class Period. If a Settlement Class Member disputes his/her Individual
9 Settlement Share, it shall be termed a “Weekly Pay Period Dispute.”

10 **2. BACKGROUND**

11 **A.** On June 2, 2020, Plaintiff filed a putative wage-and-hour Class Action Complaint
12 in the Superior Court of California for the County of Los Angeles, Case Number 20STCV21191
13 (the “Action”). Plaintiff alleges that during the Class Period, with respect to Plaintiff and the
14 Settlement Class Members’, Defendant and named defendants Amar Patel (erroneously sued as
15 Amir Patel) and Amit Patel), *inter alia*, failed to pay overtime and minimum wages; failed to
16 provide compliant meal and rest periods or compensation in lieu thereof; waiting time penalties;
17 wage statement violations; failed to provide employment records pursuant to Labor Code
18 §§ 226(c) and 1198.5; failed to indemnify necessary work expenses; and engaged in unfair
19 competition based on the alleged Labor Code Violations.

20 **B.** On December 9, 2020, Plaintiff filed with the Labor and Workforce Development
21 Agency (“LWDA”) and served on Defendant a notice under Labor Code section 2699.3 (the
22 “PAGA Notice”) stating Plaintiff intended to serve as a proxy of the LWDA to recover civil
23 penalties for the Aggrieved Employees. The PAGA Notice includes violations of law pled in the
24 Class Action, in addition to a request for penalties for failure to comply with Labor Code sections
25 204, 246, 404, 432, 1174, 1198.5, and 2810.5.

26 **C.** On February 17, 2021, when 65 days passed without any communication from the
27 LWDA, Plaintiff filed a First Amended Complaint (“FAC”) adding causes of action for civil
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1 penalties under PAGA, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 for the
2 Labor Code violations set out in the PAGA Notice for herself and other Aggrieved Employees.

3 **D.** Shortly after the filing of this Action, the Parties agreed to exchange informal
4 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
5 among other things: (1) time and payroll records for 20% of the estimated 56 Class Members as
6 of June 3, 2021. (2) Class data points including average rates of pay, total hours worked during
7 the Class Period, the number of pay periods worked during the Class Period, the number of Class
8 Members that were current versus former employees, and the number of aggrieved employees
9 (3) all relevant policy documents and employee handbooks.

10 **E.** On June 28, 2021, the Parties participated in a mediation before Marc Feder, Esq.,
11 a well-regarded mediator experienced in mediating complex civil disputes. A mediator's
12 proposal was issued by Mr. Feder, which was ultimately accepted by the Parties, resulting in the
13 Settlement to resolve the Action.

14 **F.** Class Counsel has conducted significant investigation of the law and facts relating
15 to the claims asserted in the Action and has concluded that that the Settlement set forth herein is
16 fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account
17 the sharply contested issues involved, the expense and time necessary to litigate the Action
18 through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an
19 adverse outcome, the uncertainties of complex litigation, the information learned through
20 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received
21 by the Settlement Class Members.

22 **G.** Defendant has concluded that, because of the substantial expense of defending
23 against the Action, the length of time necessary to resolve the issues presented herein, the
24 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
25 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
26 claims asserted against it in the Action. However, Defendant nevertheless desires to settle the
27 Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation
28 and for the purpose of putting to rest the controversies engendered by the Action.

1 H. This Agreement is intended to and does effectuate the full, final, and complete
2 resolution of all Released Claims of Plaintiff, Aggrieved Employees, and Settlement Class
3 Members, other than those Settlement Class Members who submit a timely and valid Request
4 for Exclusion.

5 **3. JURISDICTION**

6 The Court has jurisdiction over the Parties and the subject matter of the Action. The
7 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
8 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
9 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
10 pursuant to California Rule of Court, rule 3.769, subdivision (h).

11 **4. STIPULATION OF CLASS CERTIFICATION**

12 The Parties stipulate to the certification of the Settlement Class under this Agreement for
13 purposes of settlement only.

14 **5. MOTION FOR PRELIMINARY APPROVAL**

15 Plaintiff will move for an order granting preliminary approval of the Settlement,
16 approving and directing the mailing of the proposed Notice of Class Action Settlement ("Class
17 Notice") attached hereto as Exhibit "A", conditionally certifying the Settlement Class for
18 settlement purposes only, and approving the deadlines proposed by the Parties for the submission
19 of Requests for Exclusion, Weekly Pay Period Disputes, and Objections, the papers in support
20 of Final Approval of the Settlement, and any responses to Objections or opposition papers to the
21 Motion for Final Approval.

22 **6. STATEMENT OF NO ADMISSION**

23 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
24 and the Settlement Class with respect to any claims or allegations asserted in the Action. This
25 Agreement shall not be deemed an admission by Defendant of any claims or allegations asserted
26 in the Action. Except as set forth elsewhere herein, in the event that this Agreement is not
27 approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable,
28 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or

1 remedies, or defenses in the Action, and Defendant will not be deemed to have waived, limited,
2 or affected in any way any of its objections or defenses in the Action. The Parties shall be restored
3 to their respective positions in the Action prior to the entry of this Settlement.

4 **7. RELEASE OF CLAIMS**

5 **A. Release by All Participating Class Members.**

6 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
7 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
8 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and
9 all Participating Class Members release the Released Parties of all claims against the Released
10 Parties asserted in the Complaint filed in the Action, or any and all claims that may be asserted
11 against the Released Parties based on the factual allegations in the Complaint filed in the Action,
12 as follows: For the duration of the Class Period, the release includes: (a) all claims for failure to
13 pay minimum wages; (b) all claims for failure to pay overtime and/or double time wages,
14 including but not limited to, any claims for additional wages owed due to "off the clock" work
15 or any theory related to "rounding" of hours worked; (c) all claims for failure to provide
16 compliant meal and rest periods or compensation in lieu thereof; (d) failure to pay paid sick leave
17 at the legally compliant rate (e) all claims for the failure to timely pay wages; (f) failure to timely
18 pay all wages due upon termination or resignation; (g) all claims for non-compliant wage
19 statements; (h) failure to reimburse business expenses; (i) all claims for failure to provide
20 employment records pursuant to Labor Code §§ 226(c) and 1198.5; and (j) all claims asserted
21 through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code
22 violations referenced in the Complaint. For Aggrieved Employees, the release includes, for the
23 duration of the PAGA Period, all claims released during the Class Period, as well as all claims
24 for civil penalties under PAGA arising out of Labor Code Sections 210, 226.3, 558, 1197.1, and
25 2699 based on the factual allegations and Labor Code sections alleged to have been violated in
26 the Complaint, which includes, without limitation, Labor Code sections 200, 201, 202, 203, 204,
27 226, 246, 404, 432, 510, 512, 558, 1174, 1194, 1197, 1198.5 2699, 2802 and 2810.5.

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1 **B. General Release.**

2 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
3 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
4 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in addition to
5 the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases
6 the Released Parties from all claims, demands, rights, liabilities and causes of action of every
7 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
8 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
9 arising out of, relating to, or in connection with any act or omission of the Released Parties
10 through the date of full execution of this Agreement in connection with his employment or the
11 termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that,
12 through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final
13 Judgment and payment to the Settlement Administrator shall have, expressly waived and
14 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
15 1542 of the California Civil Code, or any other similar provision under federal or state law, which
16 provides:

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

21 **8. SETTLEMENT ADMINISTRATOR**

22 Plaintiff and Defendant, through their respective counsel, have selected ILYM Group,
23 Inc. to administer the Settlement, which includes but is not limited to translating the Class Notice
24 to Spanish, distributing and responding to inquiries about the Class Notice and calculating all
25 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
26 Administrator, currently estimated to be \$6,000 will be paid from the Gross Settlement Amount.
27 If the actual Settlement Administrator fees are less than \$6,000 the difference will remain a part
28 of the Net Settlement Amount.

1 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTION, AND EXCLUSION**
2 **PROCESS**

3 **A. Notice to the Settlement Class Members.**

4 (1) Within ten (10) calendar days after the Preliminary Approval Date,
5 Defendant's Counsel shall provide the Settlement Administrator with information with respect
6 to each Settlement Class Member, including his or her: (1) name and last known address(es)
7 currently in Defendant's possession, custody, or control; (2) Social Security Number in
8 Defendant's possession, custody, or control; and (3) the hire dates and termination dates for each
9 Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address
10 search using the United States Postal Service National Change of Address ("NCOA") database
11 and update the addresses contained on the Class List with the newly found addresses, if any.
12 Within seven (7) calendar days of receiving the Class List from Defendant, the Settlement
13 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
14 Members via first-class regular U.S. Mail using the most current mailing address information
15 available. The Settlement Administrator shall maintain a list with names and all addresses to
16 which notice was given, and digital copies of all the Settlement Administrator's records
17 evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from
18 the Final Approval Date. Such information shall be available to Class Counsel and Defendant's
19 Counsel upon request.

20 (2) The Class Notice will set forth:

- 21 (a) the Settlement Class Member's estimated payment and the basis
22 for it;
23 (b) the information required by California Rule of Court, rule 3.766,
24 subdivision (d);
25 (c) the material terms of the Settlement;
26 (d) the proposed Settlement Administration Costs;
27 (e) the definition of the Settlement Class;
28

- 1 (f) a statement that the Court has preliminarily approved the
2 Settlement;
- 3 (g) how the Settlement Class Member can obtain additional
4 information, including contact information for Class Counsel;
- 5 (h) information regarding opt-out and objection procedures;
- 6 (i) the date and location of the Final Approval Hearing;
- 7 (j) that the Settlement Class Member must notify the Settlement
8 Administrator no later than the Response Deadline if the
9 Settlement Class Member disputes the accuracy of the number of
10 Weekly Pay Periods as set forth on his or her Class Notice
11 ("Weekly Pay Period Dispute"). If a Settlement Class Member
12 fails to timely dispute the number of Weekly Pay Periods attributed
13 to him or her in conformity with the instructions in the Class
14 Notice, then he or she shall be deemed to have waived any
15 objection to its accuracy and any claim to any additional settlement
16 payment based on different data; and
- 17 (k) that even if the Settlement Class Member submits a timely Request
18 for Exclusion, he or she will still be deemed an Aggrieved
19 Employee, will still receive their *pro rata* share of the PAGA
20 Payment, and will be bound by any release of claims under PAGA
21 related to the Released Claims.

22 (3) If a Class Notice from the initial notice mailing is returned as
23 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
24 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
25 calendar days of receipt of the returned Class Notice, by undertaking skip tracing. If the
26 Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the
27 Class Notice to the Settlement Class Member. Further, any Class Notices that are returned to the
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1 Settlement Administrator with a forwarding address before the Response Deadline shall be
2 promptly re-mailed to the forwarding address affixed thereto.

3 (4) No later than seven (7) calendar days from the Response Deadline, the
4 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
5 completion of the notice process, including the number of attempts to obtain valid mailing
6 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
7 and copies of all Requests for Exclusion and objections/comments received by the Settlement
8 Administrator.

9 **B. Objections.**

10 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
11 Class Members) may object to the Settlement. In order for any Settlement Class Member to
12 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written
13 objection to the Settlement Administrator at the address or phone number provided on the Class
14 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of
15 the Objection forthwith to Class Counsel and Defendant's counsel. Defendant's Counsel shall
16 lodge a copy of the Objection with the Court at least sixteen (16) court days before the hearing
17 on the Motion for Final Approval. The Objection should set forth in writing: (1) the objector's
18 name and address, and (2) the reason(s) for the Objection, along with whatever legal authority,
19 if any, the objector asserts in support of the Objection. If a Settlement Class Member objects to
20 the Settlement, the Settlement Class Member will remain a member of the Settlement Class and
21 if the Court approves this Agreement, the Settlement Class Member will be bound by the terms
22 of the Settlement in the same way and to the same extent as a Settlement Class Member who
23 does not object. The date of mailing of the Class Notice to the objecting Settlement Class
24 Member shall be conclusively determined according to the records of the Settlement
25 Administrator. Settlement Class Members need not object in writing to be heard at the Final
26 Approval Hearing; they may object or comment in person at the hearing at their own expense.
27 Class Counsel and Defendant's Counsel may respond to any objection lodged with the Court up
28 to five (5) court days before the Final Approval Hearing.

1 **C. Requesting Exclusion.**

2 Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
3 Settlement by mailing a written request to be excluded from the Settlement (“Request for
4 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline.
5 To be valid, a Request for Exclusion must include the Class Member’s name, social security
6 number and signature and the following statement or something to its effect: “Please exclude me
7 from the Settlement Class in the *Maria Mendoza v. Nayana LLC*, matter” or a statement of similar
8 meaning. The Settlement Administrator shall immediately provide copies of all Requests for
9 Exclusion to Class Counsel and Defendant’s Counsel and shall report the Requests for Exclusions
10 that it receives, to the Court, in its declaration to be provided in advance of the Final Approval
11 Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be
12 entitled to receive any payment from the Settlement and will not be bound by the Settlement
13 Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement
14 Class Member who does not opt out of the Settlement by submitting a timely and valid Request
15 for Exclusion will be bound by all terms of the Settlement, including those pertaining to the
16 Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of
17 the Settlement is granted. A Settlement Class Member cannot submit both a Request for
18 Exclusion and an objection. If a Settlement Class Member submits an objection and a Request
19 for Exclusion, the Request for Exclusion will control and the Objection will be void. Settlement
20 Class Members who worked during the PAGA Period that submit a valid Request for Exclusion
21 will still be deemed Aggrieved Employees, will still receive their *pro rata* share of the PAGA
22 Payment, and will be bound by any release of claims under PAGA related to the Released Claims.

23 **D. Disputes Regarding Settlement Class Members’ Weekly Pay Period Data.**

24 Class Members will have an opportunity to dispute the information provided in their Class
25 Notice. To the extent Class Members dispute the number of Weekly Pay Periods to which they
26 have been credited, Class Members may produce evidence to the Settlement Administrator
27 showing that such information is inaccurate. Absent evidence rebutting Defendant’s records,
28 Defendant’s records will be presumed determinative. However, if a Class Member produces

1 evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by
2 the Class Member and will make the final decision as to the number of Weekly Pay Periods that
3 should be applied. All such disputes are to be resolved not later than ten (10) calendar days after
4 the Response Deadline.

5 **E. Extension of Response Deadline for Remailing**

6 Class Members who are re-mailed a Class Notice shall have an additional fifteen (15)
7 calendar days to submit a Request for Exclusion, objection or to dispute estimated payments.
8 However, no Class Member shall have more than sixty (60) days in total to respond in any manner
9 to the Class Notice.

10 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**

11 **MEMBERS**

12 Individual Settlement Payments will be calculated and distributed to Participating Class
13 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
14 Members' respective number of Weekly Pay Periods during the Class Period. PAGA Payments
15 to Aggrieved Employees will be calculated and distributed to Aggrieved Employees on a *pro*
16 *rata* basis based on Aggrieved Employees' respective number of Weekly Pay Periods during
17 the PAGA Period. Specific calculations of the Individual Settlement Shares and PAGA
18 Payments to PAGA Aggrieved Employees will be made as follows:

19 **A.** The Settlement Administrator will determine the total number of Weekly Pay
20 Periods worked by each Settlement Class Member during the Class Period ("Class Member's
21 Weekly Pay Periods"), as well as the aggregate number of Weekly Pay Periods worked by all
22 Settlement Class Members during the Class Period ("Class Weekly Pay Periods").
23 Additionally, the Settlement Administrator will determine the total number of Weekly Pay
24 Periods worked by each Aggrieved Employee during the PAGA Period ("Aggrieved
25 Employee's Weekly Pay Periods"), as well as the aggregate number of Weekly Pay Periods
26 worked by all Aggrieved Employees during the PAGA Period ("PAGA Weekly Pay Periods").

27 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
28 Settlement Administrator will use the following formula: Individual Settlement Share =

1 (Settlement Class Member's Weekly Pay Periods ÷ Class Weekly Pay Periods) × Net
2 Settlement Amount.

3 C. To determine each Participating Class Member's Individual Settlement Share,
4 the Settlement Administrator will determine the aggregate number of Weekly Pay Periods
5 worked by all Participating Class Members during the Class Period ("Participating Class
6 Weekly Pay Periods") and use the following formula: Individual Settlement Share =
7 (Participating Class Member's Weekly Pay Periods ÷ Participating Class Weekly Pay Periods)
8 × Net Settlement Amount.

9 D. The net amount of the Individual Settlement Share is to be paid out to
10 Participating Class Members by way of check and is referred to as "Individual Settlement
11 Payment(s)".

12 E. To determine each Aggrieved Employee's PAGA Payment, the Settlement
13 Administrator will use the following formula: Aggrieved Employee's PAGA Payment =
14 (Aggrieved Employee's Weekly Pay Periods ÷ PAGA Weekly Pay Periods) x \$2,500.00 (the
15 portion of the PAGA Payment paid to PAGA Aggrieved Employees). This amount is to be paid
16 out to Aggrieved Employees by way of check.

17 **11. DISTRIBUTION OF PAYMENTS**

18 **A. Distribution of Individual Settlement Payments.**

19 Settlement Class Members who do not submit a timely and valid Request for Exclusion
20 (i.e., Participating Class Members) will receive an Individual Settlement Payment. All PAGA
21 Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not,
22 will receive their portion of the PAGA Payment. Individual Settlement Payment checks and
23 checks to PAGA Aggrieved Employees for their portion of the PAGA Payment shall remain
24 valid and negotiable for one hundred and eighty (180) calendar days after the date of their
25 issuance. Any amounts from Settlement Payment checks that remains uncashed and otherwise
26 unclaimed shall be distributed to the Controller of the State of California to be held pursuant
27 to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the benefit of
28 that Participating Class Member and/or PAGA Aggrieved Employee, as applicable. The

1 Parties agree that this disposition results in no "unpaid residue" under California Code of Civil
2 Procedure section 384, as the entire Net Settlement Amount will be paid out to the Participating
3 Class Members and PAGA Aggrieved Employees. Therefore, Defendant will not be required
4 to pay any interest on said amount. In the event that a PAGA Aggrieved Employee's payment
5 is distributed to the Controller of the State of California, the terms of the final judgment and
6 the release of claims under PAGA related to the Released Claims will nevertheless be binding
7 upon that PAGA Aggrieved Employee .

8 **B. Funding of Settlement.**

9 Defendant shall pay the Gross Settlement Amount of One Hundred Ninety-Seven, Six
10 Hundred Twenty-Five Thousand Dollars and Twenty-Four Cents (\$197,625.24) unless the same
11 is escalated pursuant to Paragraph 16 below (and in such event, the escalated amount) to the
12 Settlement Administrator in addition to Employer's Taxes. All amounts must be paid to the
13 Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an
14 interest-bearing qualified settlement account ("QSA") with an FDIC insured banking institution,
15 for distribution in accordance with this Agreement and the Court's Orders and subject to the
16 conditions described herein. Individual Settlement Payments for Class Members and PAGA
17 Payments to Aggrieved Employees shall be paid exclusively from the QSA, pursuant to the
18 settlement formula set forth herein.

19 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
20 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
21 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
22 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
23 Payment, as specified in this Agreement and approved by the Court; and (5) PAGA Payments to
24 Aggrieved Employees on a *pro rata* basis based on their Weekly Pay Periods worked during the
25 PAGA Period. The balance any and any accrued interest thereon remaining shall constitute the
26 Net Settlement Amount from which Individual Settlement Payments shall be made to
27 Participating Class Members, less applicable taxes and withholdings. All interest accrued shall
28 be for the benefit of the Class Members and Aggrieved Employees and distributed in a pro-rata

1 basis.

2 **C. Time for Distribution.**

3 No more than fourteen (14) calendar days after payment of the full Gross Settlement
4 Amount (as the same may be escalated by Paragraph 16 below) by Defendants=, as well as
5 Employer Taxes, the Settlement Administrator shall distribute all payments due under the
6 Settlement, including the Individual Settlement Payments to Participating Class Members and
7 PAGA Payments to Aggrieved Employees, as well as the Court-approved payments for the
8 Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel,
9 administration costs to the Settlement Administrator, and the LWDA Payment.

10 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

11 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
12 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, of Sixty-Nine Thousand,
13 One Hundred Sixty-Eight Dollars and Eighty-Three Cents (\$69,168.83). Class Counsel shall
14 further apply for, and Defendant shall not oppose, an application or motion by Class Counsel for
15 reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set
16 forth by declaration testimony in an amount up to Twenty Thousand Dollars and Zero Cents
17 (\$20,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement
18 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain
19 Final Approval of the settlement in the Action. The "future" aspect of the amounts stated herein
20 includes, without limitation, all time and expenses expended by Class Counsel (including any
21 appeals therein). There will be no additional charge of any kind to either the Settlement Class
22 Members or request for additional consideration from Defendant for such work. Should the Court
23 approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the
24 amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement
25 Amount.

26 **12. SERVICE AWARD TO PLAINTIFF**

27 Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to
28 exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in

1 and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the
2 Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves
3 Service Awards to Plaintiff in less than the amounts sought herein, then the unapproved
4 portion(s) shall be a part of the Net Settlement Amount.

5 **13. TAXATION AND ALLOCATION**

6 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
7 be reported on an IRS Form W2); and 80% as interest, premiums, and penalties (to be reported
8 on an IRS Form 1099). The PAGA Payments to the Aggrieved Employees shall be characterized
9 as non-wages (to be reported on an IRS Form 1099). The Parties agree that the employee's share
10 of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share
11 will be withheld from the Individual Settlement Share in order to yield the Individual Settlement
12 Payment. The amount of federal income tax withholding will be based upon a flat withholding
13 rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as
14 amended or supplemented. Income tax withholding will also be made pursuant to applicable
15 state and/or local withholding codes or regulations.

16 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
17 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
18 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
19 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
20 set forth in this Section may be modified in a manner to bring Defendant into compliance with
21 any such changes.

22 **C.** All Employer Taxes shall be paid by Defendant separate, apart and above from
23 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
24 payroll taxes as described above.

25 **D.** Neither Counsel for Plaintiff nor Defendant intends anything contained in this
26 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
27 be relied upon as such within the meaning of United States Treasury Department Circular 230
28 (31 C.F.R. Part 10, as amended) or otherwise.

1 **14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

2 A. The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00)
3 of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
4 percent (75%) of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*,
5 the LWDA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement
6 Amount (\$2,500.00), to be distributed to Aggrieved Employees on a *pro rata* basis, based upon
7 their respective Weekly Pay Periods in the PAGA Period (*i.e.*, the PAGA Payments).

8 B. Upon the funding of the Gross Settlement Amount, Plaintiff, as the PAGA Representative
9 on behalf of the State of California and Labor and Workforce Development Agency, shall fully
10 release and discharge the Released Parties from the Released PAGA Claims that arose during the
11 PAGA Period. Plaintiff shall notify the LWDA of this settlement pursuant to Labor Code §2698
12 et. seq. and shall submit any judgment or order approving the PAGA settlement to the LWDA
13 within 10 days after the judgment or order is entered.

14 **15. COURT APPROVAL**

15 This Agreement is contingent upon an order by the Court granting Final Approval of the
16 Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event
17 it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the
18 Parties shall be restored to their respective positions in the Action prior to entry of this Settlement.
19 If this Settlement Agreement is voided, not approved by the Court or approval is reversed on
20 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the
21 extent: (a) the Court reserves any authority to issue any appropriate orders when denying
22 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
23 stated to survive the Settlement Agreement being voided or not approved, and which control in
24 such an event.

25 **16. INCREASE IN SHIFTS**

26 Defendant represents that there are approximately 4,112 workweeks worked during the
27 Class Period through June 3, 2021. In the event the number of workweeks worked increases by
28 more than 10%, or 411 workweeks worked, then the Gross Settlement Amount shall be

1 increased proportionally over the 10% increase. For example, if the number of workweeks
2 increases by 11% the Gross Settlement Amount will increase by 1%. Likewise, if the
3 workweeks increase by 12% the Gross Settlement Amount will increase by 2%. The workweek
4 value shall be calculated by dividing the Gross Settlement Amount by 4,112). The Parties agree
5 that the workweek value amounts to and the settlement amounts to \$48.06 per workweek
6 (\$197,625.24 / 4,112 workweeks). Thus, for example, should there be 5,000 workweeks in the
7 Class Period, then the Gross Settlement Amount shall be increased by \$22,924.62. (5,000
8 workweeks – 4,523 workweeks x \$48.06/workweek.)

9 **17. NOTICE OF JUDGMENT**

10 In addition to any duties set out herein, the Settlement Administrator shall provide
11 notice of the Final Judgment entered in the Action by posting the same on its website for at
12 least three (3) years after the Judgment becomes final.

13 **18. MISCELLANEOUS PROVISIONS**

14 **A. Interpretation of the Agreement.**

15 This Agreement constitutes the entire agreement between Plaintiff and Defendant with
16 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
17 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
18 oral or written representations or terms shall modify, vary or contradict its terms. In entering
19 into this Agreement, the Parties agree that this Agreement is to be construed according to its
20 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
21 interpreted and enforced under the laws of the State of California, both in its procedural and
22 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
23 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
24 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
25 Defendant hereby consent to the personal jurisdiction of the Court in the Action over it solely in
26 connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement Class,
27 and Defendant participated in the negotiation and drafting of this Agreement and had available
28 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor

1 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
2 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
3 by the Court.

4 **B. Further Cooperation.**

5 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare and
6 execute all documents, to seek the necessary approvals from the Court, and to do all things
7 reasonably necessary to consummate the Settlement as expeditiously as possible.

8 **C. Counterparts.**

9 The Agreement may be executed in one or more actual or non-original counterparts, all
10 of which will be considered one and the same instrument and all of which will be considered
11 duplicate originals.

12 **D. Authority.**

13 Each individual signing below warrants that he or she has the authority to execute this
14 Agreement on behalf of the party for whom or which that individual signs.

15 **E. No Third-Party Beneficiaries.**

16 Plaintiff, Participating Class Members, Class Counsel, and Released Parties are direct
17 beneficiaries of this Agreement, but there are no third-party beneficiaries.

18 **F. Deadlines Falling on Weekends or Holidays.**

19 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
20 or legal holiday, that deadline shall be continued until the following business day.

21 **G. Severability.**

22 In the event that one or more of the provisions contained in this Agreement shall for any
23 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
24 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
25 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
26 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

27 ///

28 ///

1 **H. No Publicity.**

2 Neither the Parties nor their counsel, without the prior written approval of counsel for the
3 other Party (which may be withheld in a Party's sole discretion), shall issue, authorize, or
4 contribute to the preparation or dissemination of any press release or any other public statement
5 or advertisement, including but not limited to publishing any information relating to the
6 Agreement on either Parties' counsel's website, concerning this Agreement or any of its terms,
7 or sponsor or participate in any press conference, interview, media appearance, or other public
8 discussion concerning this Agreement or any of its terms. If the Parties or their counsel are
9 contacted by the press, media or any industry association, they will respond only that the Action
10 has been amicably resolved to the Parties' mutual satisfaction. Nothing herein will restrict
11 Plaintiff or Class Counsel from communicating with the Settlement Class about the Agreement
12 or in submitting filings with the Court or the LWDA in furtherance of obtaining approval of the
13 Settlement. Nor shall anything herein restrict Class Counsel from including publicly available
14 information regarding this Settlement in future judicial submissions regarding Class Counsel's
15 qualifications and experience or otherwise allowing the Judgment to become known to Class
16 Members.

17 **IT IS SO AGREED:**

18
19 Dated: **Nov 24, 2021**, 2021

Maria Luisa Mendoza Romo

Maria Luisa Mendoza Romo (Nov 24, 2021 21:59 PST)

MARIA MENDOZA
Plaintiff and Class Representative

21
22
23 Dated: _____, 2021

NAYANA, LLC
Defendant
By:
Its:

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20 Dated: _____, 2021

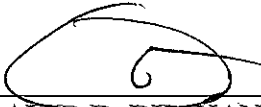
MARIA MENDOZA
Plaintiff and Class Representative

21
22
23 Dated: 11/23, 2021

NAYANA, LLC
Defendant
By: Amit Patel
Its: Managing Member

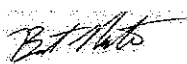
1 **AGREED AS TO FORM:**

2
3 Dated: November 23, 2021



DAVID D. BIBIYAN
JEFFREY D. KLEIN
Bibiyan Law Group, P.C.
Counsel for Plaintiff Maria Mendoza

4
5
6
7
8 Dated: November 24, 2021



BRET MARTIN
FISHER & PHILLIPS LLP
Counsel for Defendant NAYANA, LLC,

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Maria Luisa Mendoza Romo
Maria Luisa Mendoza Romo (Nov 24, 2021 21:59 PST)

MARIA MENDOZA
Plaintiff and Class Representative

20
21
22
23 Dated: _____, 2021

NAYANA, LLC
Defendant
By:
Its: