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13
14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**
16

17 **JUAN MIRELES**, an individual, on behalf of
himself and all others similarly situated,

18 Plaintiffs,

19 vs.
20

21 **DIMENSION DEVELOPMENT**
COMPANY, INC., a Louisiana corporation; **G**
& B HOTEL EMPLOYEE LEASING, LLC,
22 a Louisiana corporation; and **DOES 1-50**,

23 Defendants.
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Case No. 21STCV17037

[Assigned for all purposes to Hon. Michael P.
Linfield, Dept. 34]

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE

Complaint filed: May 5, 2021
Trial Date: None Set

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1.5. **“Effective Date”**: The date the Court enters an order approving the Settlement.

1.6. **“Lawsuit”**: *Mireles v. Dimension Development Company, Inc. et al.*, Los Angeles County Superior Court, Case No. 21STCV17037 filed on May 5, 2021.

1.7. **“LWDA”**: California Labor & Workforce Development Agency.

1.8. **“LWDA Payment”**: The amount payable to the State of California’s Labor and Workforce Development Agency pursuant to the PAGA.

1.9. **“Notice of PAGA Settlement”**: The Notice to be sent to PAGA Employees along with their individual Settlement Check notifying them of the Settlement, which shall be substantially in the form of **Exhibit A** hereto.

1.10. **“PAGA”**: Private Attorneys General Act of 2004, California Labor Code §2698, *et seq.*

1.11. **“PAGA Employees”**: All current and former non-exempt hourly paid employees employed by Defendants at any of the California Hotel Properties during February 24, 2020 to November 29, 2021. Defendants represented at mediation that there are 950 such employees, 580 of whom experienced discharges (including layoffs from which they may or may not have been returned to work) during the PAGA period.

1.12. **“PAGA Employee Fund”**: 25% of the Settlement Sum.

1.13. **“PAGA List”**: A list of all PAGA Employees, including their full names, and most up-to-date contact information (physical and/or mailing address and social security numbers) possessed by Defendants.

1.14. **“PAGA Period”**: February 24, 2020 to November 29, 2021.

1.15. **“Plaintiff”**: Juan Mireles.

1.16. **“Plaintiff’s Counsel”**: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss and Jorge A. Flores of Moss Bollinger, LLP.

1.17. **“Released Claims”**: Claims under PAGA for violations of the California Labor Code and/or Industrial Welfare Commission (“IWC”) Wage Orders which were alleged by

1 Plaintiff, or reasonably could have been alleged by Plaintiff by reason of or in connection with
2 the same set of operative facts set forth in the Lawsuit. Without limiting the foregoing release,
3 Released Claims shall include but are not limited to:

4 1.17.1. Claims for civil penalties under California Labor Code Private Attorneys
5 General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 et seq. related to the
6 following alleged Labor Code violations: (1) failure during the PAGA period to timely
7 pay all wages upon discharge and resignation from employment in violation of Labor
8 Code §§ 201, 202 and 203; (2) failure during the PAGA period to pay those alleged
9 gratuities that took the form of mandatory service charges left for, given to and paid to
10 employees in violation of Labor Code § 351; (3) failure during the PAGA period to
11 provide adequate rest breaks and pay rest break violation premium pay in violation of
12 Labor Code § 226.7 and subsection 12 of IWC Wage Order 5-2001; and (4) failure at
13 times during the PAGA period to provide wage statements that complied with Labor
14 Code § 226 (collectively “Released Claims”).

15 1.17.2. As to Plaintiff only (and not as to other PAGA Employees), considering
16 the Service Payment provided to him, Released Claims shall include all claims, whether
17 known or unknown, to the fullest extent permitted by law, against the Released Parties.
18 Plaintiff further understands that this release includes unknown claims and that he is, as a
19 result, waiving all rights and benefits afforded by California Civil Code §1542, which
20 provides: “A general release does not extend to claims that the creditor or releasing party
21 does not know or suspect to exist in his or her favor at the time of executing the release
22 and that, if known by him or her, would have materially affected his or her settlement
23 with the debtor or released party.” Notwithstanding anything to the contrary in this
24 Agreement, Plaintiff’s general release of claims does not apply to: (i) those rights as a
25 matter of law that cannot be waived, including but not limited to claims relating to
26 workers’ compensation or unemployment benefits; and, (ii) rights or claims arising out of
27 this Settlement Agreement.

1 1.18. **“Releasees” or “Released Parties”**: Defendants Dimension Development
2 Company Inc. and G&B Hotel Employee Leasing, LLC and each of Defendants’ respective past,
3 present and future owners, parents, affiliates, including but without limitation to Dimension
4 Development Two, LLC, Apple Nine Hospitality Management, Inc., Apple Eight Hospitality
5 Management, Inc., SWVP Del Mar Hotel LLC, SWVP Valencia LLC, SWVP Westlake LLC,
6 SWVP MDM LLC, subsidiaries, and all of their respective current, former, and future officers,
7 directors, members, managers, employees, consultants, partners, shareholders, joint venturers,
8 successors, assigns, accountants, insurers, or legal representatives.

9 1.19. **“Settlement Agreement” or “Settlement”**: The Private Attorneys General Act
10 Settlement Agreement and Release memorialized herein.

11 1.20. **“Settlement Sum”**: The total inclusive gross sum of \$362,500.00.

12 **2. RECITALS**

13 2.1. WHEREAS, on May 5, 2021, Plaintiff filed the Lawsuit alleging violations of law
14 entitling PAGA Employees to recovery under PAGA. The Lawsuit alleged violations of the
15 Labor Code, including but not limited to §§201, 202, 226, 226.7, 351, and the IWC Wage
16 Orders, including IWC Wage Order 5, which allegedly gives rise to liability for civil penalties
17 under PAGA. Prior to filing the Complaint, Plaintiff exhausted his administrative remedies under
18 PAGA by giving notice to the LWDA and Defendants as required by law on February 24, 2021.

19 2.2. WHEREAS, Defendants deny all of the allegations in the Lawsuit and in the LWDA
20 notice, and deny that they individually or collectively have committed any misconduct, statutory
21 or regulatory violation, wrongdoing, or any other actionable conduct.

22 2.3. WHEREAS, the Parties engaged in formal and informal discovery prior to mediating
23 this matter. Plaintiff propounded written discovery on Defendants, Defendants voluntarily
24 provided substantial data concerning PAGA Employees, including relevant policies and
25 handbooks, details regarding the number of employees laid off during the PAGA period and the
26 timing of their wage payments upon layoff. In addition, Defendants confirmed the dates during
27 which wages statements did not include employer addresses, and the number of wage statements

1 that did not have the addresses during the PAGA period. Defendants also provided evidence of
2 the substantial number of break premiums they paid during the PAGA period. Defendants also
3 provided pertinent information confirming that due to the pandemic, the service charge issue
4 raised by Plaintiff was for the most part a non-issue because of the lack of service charges for
5 either room service or banquets due to pandemic shutdowns and limitations on services when re-
6 openings occurred. The data provided also established that when service charges were
7 reintroduced and the hotels started offering services that had mandatory service charges, policies
8 were put into place that provided all service charges were paid to the service providers.

9 The Parties conducted independent analyses of the records and other information
10 provided to assess potential liability as well as assess strengths and weaknesses of the case.

11 2.4. WHEREAS, the Parties negotiated with the understanding that during the PAGA
12 Period, there were no more than 11,830 pay periods worked by 950 PAGA Employees, 580 of
13 whom experienced a discharge (which includes layoffs) during the PAGA Period, and that 7,784
14 wage statements were issued to PAGA Employees during the PAGA Period that did not include
15 an employer's address on the wage statement before Defendants started including the employer's
16 address on wage statements.

17 2.5. WHEREAS, the Parties understand, acknowledge, and agree that this Settlement
18 Agreement constitutes a compromise of the claims asserted in the Complaint and that it is the
19 desire and intention of the Parties to effect a final and complete resolution of the claims asserted
20 in the Complaint that Plaintiff, the State, and all PAGA Employees have or could have against
21 Defendant arising under PAGA as of the Effective Date. The Parties further acknowledge that
22 this Settlement Agreement is an arms-length negotiated compromise between them, and that it is
23 intended to settle all claims under PAGA that were alleged by Plaintiff or reasonably could have
24 been alleged by Plaintiff by reason of or in connection with the facts set forth in the Lawsuit.

25 2.6. WHEREAS, the Parties recognize that there is inherent risk and uncertainty in the
26 outcome of the Lawsuit should litigation continue, inasmuch as Defendants deny and dispute any
27 and all of Plaintiff's claims and allegations and further deny that Plaintiff and PAGA Employees

1 have any cognizable claim(s) under PAGA, and even if there was a determination of liability
2 against Defendants after trial on the merits, the Court retains the ability to “award a lesser
3 amount than the maximum civil penalty” pursuant to California Labor Code §2699(e)(1).

4 2.7. WHEREAS, following a full-day mediation with mediator Steven Serratore, Esq. on
5 November 29, 2021, the Parties reached an agreement to settle all claims in the Lawsuit. The
6 Parties believe and agree that this Settlement Agreement provides for a fair, adequate, and
7 reasonable resolution of the Lawsuit and have arrived at the settlement in extensive, arm’s length
8 negotiations, considering all relevant factors, present and potential.

9 2.8. WHEREAS, California Labor Code §2699(l)(2) requires Court approval of a
10 settlement of any action filed under PAGA.

11 2.9. WHEREAS, the Parties understand that upon entry of the Court’s final order
12 approving this settlement, Plaintiff, the State, and any and all PAGA Employees will release
13 Releasees from liability, if any, arising out of the Released Claims.

14 2.10. WHEREAS, the Parties understand Lawsuit will be dismissed with prejudice upon
15 entry of an order by the Court approving the settlement, although the Court will retain
16 jurisdiction of the case pursuant to California Code of Civil Procedure §664.6 to enforce the
17 terms of this Agreement and approval order.

18 2.11. WHEREAS, the Parties submit this Settlement Agreement to the Court and
19 respectfully request that the Court approve the same pursuant to California Labor Code
20 §2699(l)(2).

21 3. **RELEASE:** Upon entry of an Order approving the Settlement Agreement, all PAGA
22 Employees release Releasees from all Released Claims. The Parties agree and acknowledge that,
23 to the maximum extent permitted by law, the final order entered pursuant to this Settlement
24 Agreement will bind all those who would be bound by a judgment if the action had been brought
25 by the LWDA, including Plaintiff, the LWDA, and PAGA Employees, with respect to the
26 recovery of civil penalties for the Released Claims against the Releasees.

27 4. **IRS 1099:** With regard to settlement payments to PAGA Employees, to the extent required by

1 law, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal
2 advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has
3 not obtained tax advice from Defendants and that neither Defendants nor their attorneys have
4 made any representation concerning the tax consequences, if any, of the Settlement Amount in
5 this Settlement Agreement or any payment to be made pursuant to this Settlement Agreement.
6 Defendants and their attorneys and Plaintiff's Counsel have not made any representation to any
7 PAGA Employees concerning the tax consequences, if any, of the Settlement Amount in this
8 Settlement Agreement or any payment to be made pursuant to this Settlement Agreement.

9 **5. NOTICE AND ADMINISTRATION**

10 5.1. The Settlement Administrator's duties shall include, without limitation: (i)
11 printing and mailing to the Notice of PAGA Settlement in English and Spanish as directed by the
12 Court; (ii) taking all steps reasonably necessary to ensure PAGA Employees receive the Notice
13 of PAGA Settlement and Settlement Checks; (iii) taking receipt of and safeguarding the
14 Settlement Sum; (iv) calculating and distributing Settlement Checks, the Service Award, and the
15 Attorneys' Fees and Expense Award, provided such amounts are approved by the Court; (v)
16 issuing IRS Forms 1099-MISC, as applicable; and (ix) filing such other reports with the taxing
17 authorities as required by law, together with such other tasks as the Parties may mutually agree
18 or the Court may order the Settlement Administrator to perform. The Settlement Administrator
19 shall take all reasonable steps to ensure that (a) the highest percentage of PAGA Employees
20 receive the Notice of PAGA Settlement and their Settlement Check; and (b) it has the most
21 current and accurate addresses for PAGA Employees, including, but not limited to performing an
22 initial National Change of Address database search on all PAGA Employees. In addition, the
23 Settlement Administrator shall perform a standard search, also known as "batch," "skip trace," or
24 "credit header" searches, on all addresses returned as undeliverable. The Settlement
25 Administrator shall perform the skip trace and re-mail the Notice of PAGA Settlement and
26 Settlement Checks to all updated addresses obtained through its efforts to locate the most current
27 and accurate addresses for PAGA Employees within seven (7) calendar days of the return of the

1 Notice of PAGA Settlement and Settlement Check. The Settlement Administrator shall also
2 provide toll-free telephone support to PAGA Employees for any questions they may have;
3 maintain appropriate databases to fulfill its duties; receive, control and account for all returned
4 Notices and Settlement Checks; calculate the settlement payments; and prepare and deliver a
5 report to Plaintiff's Counsel and counsel for Defendants on the number of Notices and
6 Settlement Checks returned as undelivered. In addition to the duties identified above, the
7 Settlement Administrator shall prepare a final declaration to be submitted to the Court upon the
8 expiration of the date for PAGA Employees to deposit their Settlement Checks. The Parties
9 recognize that Defendants fully discharge their obligations to those PAGA Employees to whom
10 payment is made through the mailing of a check, regardless of whether such checks are actually
11 received and/or negotiated by PAGA Employees.

12 5.2. No later than 21 calendar days after the Effective Date, Defendants shall provide
13 the Settlement Administrator with the PAGA List.

14 5.2. The PAGA List, and any other data provided by Defendants to the Settlement
15 Administrator shall be treated as confidential and shall not be used by the Settlement
16 Administrator for any purpose other than as permitted by the Settlement Agreement, and the
17 Settlement Administrator shall use commercially reasonable efforts to secure the data provided
18 by Defendants at all times so as to avoid inadvertent or unauthorized disclosure or use of such
19 data other than as permitted by the Settlement Agreement.

20 5.3. The PAGA List shall state the PAGA Employees' first name and last name, the
21 last known home address for each such employee, each employee's social security number, the
22 PAGA Employees' respective total number of pay periods worked during the PAGA Period, the
23 PAGA Employees' respective total number of inaccurate wage statements (i.e., wage statements
24 that failed to state the address of the employer) received during the PAGA Period, and whether
25 the PAGA Employee experienced a discharge (including a layoff) during the PAGA Period.

26 5.4. The Settlement Administrator shall calculate payments due to PAGA Employees
27 and the LWDA, disburse payments as outlined in this Agreement, and other related functions to

1 administer the settlement contemplated by this Settlement Agreement as described herein. The
2 Settlement Administrator shall, within seven (7) days of receiving the PAGA List, circulate to
3 counsel for the Parties a spreadsheet containing the estimated individual settlement payments to
4 each of the PAGA employees and obtain approval from counsel of all Parties of the calculations
5 before mailing individual payments to the PAGA Employees.

6 5.5. The Settlement Administrator shall mail the Notice of PAGA Settlement along
7 with Settlement Checks to PAGA Employees no later than fifteen (15) calendar days following
8 the payment of the Settlement Sum to the Settlement Administrator, as set forth in Subsection
9 6.1.5.

10 5.6. All costs incurred by the Settlement Administrator in connection with its
11 administration of the Settlement, including mailing of the Notice of PAGA Settlement, whether
12 foreseen or not, shall be paid out of the Settlement Sum agreed to as described below.

13 5.7. Plaintiff's Counsel shall provide notice of the Settlement and any Court order
14 entering Judgment to the LWDA in accordance with the PAGA.

15 **6. PAGA SETTLEMENT PAYMENT PROCEDURES:**

16 6.1. In exchange for the dismissal of the Lawsuit and Plaintiff's release as to the
17 Releasees of the Released Claims, Defendants agree to pay, in accordance with the terms
18 specified below and within fifteen (15) calendar days of when the Settlement Administrator
19 calculates payments due to PAGA Employees, the Settlement Sum, to the Settlement
20 Administrator for the benefit of the State of California and PAGA Employees.

21 6.1.1 **LWDA ALLOCATION:** Seventy-five percent (75%) of the Civil Penalties shall
22 be allocated to the California Labor and Workforce Development Agency ("LWDA"). From the
23 LWDA's allocation, the Settlement Administrator shall pay (1) the amount of Attorneys' Fees
24 awarded by the Court to Plaintiff's Counsel; (2) Attorneys' Litigation Expenses awarded by the
25 Court to Plaintiff's Counsel; (3) the Service Payment to Plaintiff approved by the Court; (4)
26 Notice and Settlement Administration Costs approved by the Court to the Settlement
27 Administrator; (5) any other fees or expenses incurred in executing the terms of this Agreement

as approved by the Court; and the balance to the LWDA.:

6.1.2. **PAGA EMPLOYEE FUND**: The PAGA Employee Fund shall consist of twenty-five percent (25%) of the Settlement Sum, or \$90,625. The PAGA Employee Fund shall constitute the share of PAGA penalties recoverable by the PAGA Employees pursuant to Section 2699(i) of PAGA. PAGA Employees do not need to make a claim to participate in the Settlement. The Settlement Administrator shall pay a share from the PAGA Employee Fund as calculated based on the provisions of Subsection 6.1.5 to each PAGA Employee.

6.1.3. **ATTORNEYS' FEES**: Plaintiff's Counsel's attorneys' fees, subject to Court approval to be paid from the LWDA's Allocation shall equal 1/3 (33.34%) of the Settlement Sum. Court approval of the settlement shall not be contingent on the Court's approval of attorney's fees. Defendants agree not to dispute or otherwise object to Plaintiff's request for attorney's fees in an amount not to exceed 33.34% of the Settlement Sum in addition to reimbursement of actual litigation costs. The attorneys' fees awarded by the Court shall be paid to Plaintiff's Counsel no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator

6.1.3. **SERVICE PAYMENT TO PLAINTIFF**: The amount awarded to Plaintiff as a service payment, subject to Court approval, to be paid from the LWDA's Allocation, shall equal \$10,000.00. An IRS Form 1099 will be issued to Plaintiff for his Service Payment. Defendants agree not to dispute or otherwise object to the Service Payment if it is an amount that does not exceed \$10,000.00. The Service Payment awarded by the Court shall be paid to Plaintiff no later than fifteen (15) calendar days following the payment of the Settlement Sum to the Settlement Administrator.

6.1.4. **ATTORNEYS' LITIGATION EXPENSES**: Plaintiff's Counsel, subject to Court approval, will be reimbursed from the LWDA's Allocation documented out-of-pocket litigation costs and expenses, not to exceed fifteen thousand dollars

1 (\$15,000.00). Defendants agree not to object or dispute Plaintiff's requests for costs in
2 an amount of up to \$15,000.00. The attorneys' litigation expenses awarded by the Court
3 shall be paid to Plaintiff's Counsel no later than fifteen (15) calendar days following the
4 payment of the Settlement Sum to the Settlement Administrator.

5 **6.1.5. SETTLEMENT ADMINISTRATOR PAYMENT:** The Settlement
6 Administrator's payment from the LWDA's Allocation, subject to Court approval, shall
7 not exceed five thousand seven hundred fifty dollars (\$5,750.00) based on 950 PAGA
8 Employees. The Settlement Administrator's payment shall be paid to the Settlement
9 Administrator no later than fifteen (15) calendar days following the payment of the
10 Settlement Sum to the Settlement Administrator.

11 **6.1.6. PAYMENT TO PAGA EMPLOYEES:** The PAGA Employee Fund
12 shall be paid to PAGA Employees no later than fifteen (15) calendar days following the
13 payment of the Settlement Sum to the Settlement Administrator in accordance with the
14 following methodology:

- 15
- 16 (A) For every pay period worked by a PAGA Employee during the
- 17 PAGA Period, the PAGA Employee will receive one (1) "Net
- 18 Settlement Share";
- 19
- 20 (B) For every inaccurate wage statement (i.e., a wage statement that
- 21 fails to state the address of the employer) issued to a PAGA
- 22 Employee during the PAGA Period, the PAGA Employee will
- 23 receive two (2) additional Net Settlement Shares;
- 24
- 25 (D) Every PAGA Employee that experienced a discharge by layoff or
- 26 otherwise during the PAGA Period, will receive ten (10) additional
- 27 Net Settlement Shares;
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(E) The Settlement Administrator shall then divide each PAGA Employee's total Net Settlement Shares by the total Net Settlement Shares for all PAGA Employees in order to determine the "Percentage Share" of each PAGA Employee;

(F) Each PAGA Employee shall be entitled to receive a settlement award equal to his or her Percentage Share of the PAGA Employee Fund.

Payments to PAGA Employees shall be mailed by First Class U.S. Mail, and shall be accompanied by the Notice of PAGA Settlement, in both English and Spanish, submitted herewith as **Exhibit A**.

6.1.7. The PAGA Employee Fund shall be distributed to PAGA Employees in an amount calculated pursuant to Subsection 6.1.6 and in the form of a mailed check that shall remain valid for one hundred eighty (180) calendar days from issuance. For any PAGA Employee whose check remains uncashed ninety (90) calendar days from issuance, the Settlement Administrator shall mail a reminder notice that the check will only remain valid for one hundred eighty (180) calendar days from issuance. Thereafter, all uncashed checks shall be voided and any remaining monies from the PAGA Employee Fund shall be paid to the LWDA.

6.1.8. The LWDA Payment shall be paid to the LWDA no later than fifteen (15) days following the payment of the Settlement Sum to the Settlement Administrator.

6.1.11. Within 15 calendar days of receiving approval from the Parties' counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement Sum.

7. **CONFIRMATORY DISCOVERY:** In settlement negotiation, the Parties based the Settlement on data provided by Defendants for mediation, including a total number of 11,830 pay periods worked by 950 PAGA Employees during the PAGA Period, 580 of whom

experienced a discharge, and 7,784 wage statements issued to PAGA Employees during the PAGA Period that did not include an employer's address on the wage statement before Defendants started including the employer's address on wage statements Prior to approval of the Settlement, Defendants shall provide confirmatory discovery responses related to the alleged violations. Should the responses to the confirmatory discovery be materially inconsistent with the information provided in advance of the mediation, the Plaintiff shall have the right to void the Settlement unless the Parties agree to an increase of the Settlement Sum.

8. **COURT APPROVAL:** Should the Court not approve this Settlement Agreement, the Parties shall request leave and work jointly to attempt to revise the Settlement Agreement in order to obtain the Court's approval. If, despite the Parties best efforts, the Court still does not approve the Settlement Agreement, this Settlement Agreement shall become null and void and have no force and effect.

9. **CONTINGENCIES:** This Settlement Agreement is contingent on the review and approval of the of the court as required under California Labor Code §2699(1)(2).

10. **REPRESENTATIONS AND WARRANTIES:** In further consideration for payment by Defendants of the Settlement Sum, Plaintiff represents and warrants that he has the right and exclusive authority to execute this Settlement Agreement. Each Party to this Settlement Agreement also represents and warrants the following:

10.1. Each Party has carefully read, and knows and understands the full contents of this Settlement Agreement and is voluntarily entering into this Settlement Agreement after having received independent legal advice from his or its attorneys with respect to the advisability of making the settlement provided for herein.

10.2. In executing this Settlement Agreement, no Party relies or has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party), except as expressly stated in this Settlement Agreement.

10.3. Each Party to this Settlement Agreement has investigated the facts relevant to this

1 settlement and this Settlement Agreement, and all matters pertaining thereto, to the full extent
2 that each Party deems necessary.

3 10.4. Each separately numbered term of this Settlement Agreement is contractual, not
4 merely a recital. All recitals stated herein are illustrative of the purposes and intentions of the
5 Parties with respect to this Settlement Agreement and shall be relevant and admissible for
6 purposes of interpreting this Settlement Agreement should such interpretation become necessary.

7 10.5. Each of the Parties has participated in the drafting of all provisions of this
8 Settlement Agreement, has had an adequate opportunity to read, review, and consider the effect
9 of the language of this Settlement Agreement, and has agreed to its terms.

10 11. **CHOICE OF LAW AND VENUE:** The rights and obligations of the Parties under this
11 Settlement Agreement shall be construed and enforced in accordance with, and governed by, the
12 laws of the State of California. California law shall govern the interpretation of this Settlement
13 Agreement even if a choice of law analysis under state or federal law would dictate that another
14 forum's law be applied. The proper venue for in any action relating to, connected to, involving,
15 or arising out of this Settlement Agreement shall be Los Angeles County, California.

16 12. **COOPERATION:** Each Party agrees that they will abide by this Settlement Agreement
17 and will do all such acts, and prepare, execute, and deliver all such documents, as may be
18 reasonably required to carry out the stated objectives of this Settlement Agreement.

19 13. **SEVERANCE:** If any provision of this Settlement Agreement is held to be invalid by a
20 court of competent jurisdiction, that provision shall be deemed severed and deleted from this
21 Settlement Agreement, and neither that provision nor its severance and deletion shall affect the
22 validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release
23 contained herein may be deemed severed or deleted from this Settlement Agreement, except
24 upon waiver in writing by the applicable Released Party. However, if the Court, prior to
25 approving this Settlement Agreement, indicates the need to sever any provision of this
26 Settlement Agreement to obtain the Court's approval, the Parties shall meet and confer regarding
27 the proposed severance, and each shall have the right to declare null and void the Settlement

1 Agreement in its entirety if the proposed severing is unsatisfactory to them.

2 14. **NON-ADMISSION OF WRONGDOING:** The Parties agree that this Settlement
3 Agreement does not constitute an admission of Defendants or any Releasee of any of the matters
4 alleged in the Lawsuit or of any violation by any of them of any federal, state or local law,
5 ordinance or regulation, or of any violation of any policy or procedure, or of any liability or
6 wrongdoing whatsoever. Neither this Settlement Agreement nor anything in this Settlement
7 Agreement shall be construed to be or shall be admissible in any proceeding as evidence of
8 liability or wrongdoing of the Releasees.

9 15. **ADDITIONAL TERMS:**

10 15.1. This Settlement Agreement is binding upon and shall inure to the benefit of, the
11 Parties hereto and their respective agents, employees, representatives, officers, directors, parents,
12 subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

13 15.2. Given that all Parties hereto had the opportunity to draft, review, and edit the
14 language of this Settlement Agreement, no presumption for or against any Party arising out of
15 drafting all or any part of this Settlement Agreement may be applied in any action relating to,
16 connected to, involving, or arising out of this Settlement Agreement. Accordingly, the Parties
17 hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the
18 language of a contract should be interpreted against the Party who caused the uncertainty to
19 exist.

20 15.3. This Settlement Agreement may be executed in counterparts. A signature by way
21 of e-mail, facsimile, or Doc-u-Sign shall serve as an original for all purposes.

22 15.4. Headings in this Settlement Agreement are included solely for convenience and
23 shall not control the meaning or interpretation of any provision of this Settlement Agreement.

24 15.5. This Settlement Agreement may not be amended, altered, or modified except in
25 writing and signed by the Parties hereto, their successors in interest, or their duly authorized
26 representatives/counsel, and approved by the Court.

27 15.6. The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator

1 fees, and other fees incurred in connection with this Settlement Agreement and the Lawsuit,
2 except as otherwise set forth specifically herein.

3 15.7. No waiver of any condition or covenant contained in this Settlement Agreement or
4 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
5 constitute a further waiver by such Party of the same or any other condition, covenant, right, or
6 remedy. No waiver of any condition or covenant contained in this Settlement Agreement shall be
7 valid unless stated in writing and signed by the waiving party and/or his/its counsel.

8 16. **ENTIRE AGREEMENT:** This Settlement Agreement sets forth the entire agreement
9 between the Parties hereto and fully supersedes any and all prior and/or supplemental
10 understandings, whether written or oral, between the Parties concerning the subject matter of this
11 Settlement Agreement. Plaintiff acknowledged that he has not relied on any representations,
12 promises or agreements of any kind made to them in connection with their decision to accept the
13 terms of this Settlement Agreement, except for the representations, promises, and agreements
14 herein. Any modification to this Settlement Agreement must be in writing and signed by Plaintiff
15 and an authorized agent of all Defendants in order to take effect and bind the Parties.

16 **IN WITNESS WHEREOF**, the parties knowingly and voluntarily executed this Private
17 Attorneys General Act Settlement Agreement and Release subject to court review and approval,
18 as of the date set forth below.

19 [All signatures on next page]
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1 Dated: 02-23-22



Plaintiff JUAN MIRELES, on behalf of
himself and all others similarly situated, and on
behalf of the general public and the State of
California

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5 Dated: 2/4/22



Defendant DIMENSION DEVELOPMENT
COMPANY, INC.

By: Greg Friedman

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10 Dated: 2/4/22



Defendant S & B HOTEL EMPLOYEE
LEASING, LLC

By: Greg FRIEDMAN

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16 **APPROVED AS TO FORM AND CONTENT:**

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18 Dated: 2/23/2022

MOSS BOLLINGER LLP

By: 

Dennis F. Moss
Attorneys for Plaintiff

19
20
21
22
23 Dated: 2/7/2022

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP

By: 

Diana M. Estrada
Attorneys for Defendants

EXHIBIT A

to

**Private Attorneys General Act Settlement
Agreement and Release**

***Mireles v. Dimension Development Company,
Inc. et al.***

Los Angeles Sup. Ct. Case No. 21STCV17037

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Mireles v. Dimension Development Company, Inc. et al.
Los Angeles County Superior Court Case No. 21STCV17037

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - _____

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-identified action filed by Juan Mireles (“Plaintiff”) on behalf of himself, the State of California and all other aggrieved employees against Defendant Dimension Development Company, Inc and Defendant G&B Hotel Employee Leasing, LLC (“Defendants”), pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (the “Lawsuit”).

In this lawsuit, Plaintiff is seeking to recover civil penalties for alleged violations of the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders based on Plaintiff’s allegations that 1) failed to timely pay all wages upon cessation of employment; (2) failed to pay all gratuities left for, given to and paid to employees; (3) failure to provide adequate rest breaks; (4) failed to pay rest break premiums; and (5) failure to provide accurate wage statements.

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit. The Court did not find that anyone did anything wrong and approved the settlement as a fair and reasonable resolution of disputed claims.

The Court has not decided the merits of Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims. Rather, this Notice comes after the Parties have settled this matter.

You are receiving this Notice because you are considered a “PAGA Employee” by the parties, defined as: All current and former non-exempt hourly paid employees employed by Defendants at any of the California Hotel Properties during February 24, 2020 to November 29, 2021 (the “PAGA Period”).

II. INDIVIDUAL PAGA PAYMENT

Under PAGA, aggrieved employees are entitled to share 25% of the civil penalties the Plaintiff recovered in this Settlement on behalf of the State. Your individual payment amount is based on the following: (1) the number of pay periods you worked for Defendants during the PAGA Period; (2) the number of inaccurate wage statements issued to you during the PAGA Period; (3) and whether you experienced a discharge by layoff or otherwise during the PAGA Period. Accordingly, your individual payment amount is <\$XX.XX>.

The enclosed check represents your portion of the settlement recovery. You are responsible for paying any federal, state or local taxes owed as a result of this payment.

The enclosed check is valid for 180 days from the date of issuance. If you do not cash it within 180 days, the funds from uncashed checks will be remitted to the State of California’s Labor & Workforce Development Agency.

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Mireles v. Dimension Development Company, Inc. et al.
Los Angeles County Superior Court Case No. 21STCV17037

III. RELEASE

The Court has approved the Parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all PAGA Employees hereby release claims under PAGA for violations of the California Labor Code and/or Industrial Welfare Commission ("IWC") Wage Orders which were alleged by Plaintiff, or reasonably could have been alleged by Plaintiff by reason of or in connection with the same set of operative facts set forth in the Lawsuit. Without limiting the foregoing release, Released Claims shall include but are not limited to claims for civil penalties under California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code section 2698 et seq. related to the following alleged Labor Code violations: (1) failure during the PAGA period to timely pay all wages upon discharge and resignation from employment in violation of Labor Code §§ 201, 202 and 203; (2) failure during the PAGA period to pay those alleged gratuities that took the form of mandatory service charges left for, given to and paid to employees in violation of Labor Code § 351; (3) failure during the PAGA period to provide adequate rest breaks and pay rest break violation premium pay in violation of Labor Code § 226.7 and subsection 12 of IWC Wage Order 5-2001; and (4) failure at times during the PAGA period to provide wage statements that complied with Labor Code § 226 (collectively "Released Claims").:

Upon entry of the Order approving the Settlement, all PAGA Employees covered by this Agreement (including you) are barred from proceeding with any of the Released Claims released by this Settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, _____, at [ADMINISTRATOR INFO] with any questions at 1 (XXX) XXX-XXXX.

If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.