

HEWGILL COBB & LOCKARD, APC

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Attorneys for Plaintiff,
ALEJANDRA ESPINOZA AND ELVIA RIOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION**

ALEJANDRA ESPINOZA, an
individual, and ELVIA RIOS, an
individual,

Plaintiffs,

v.

MICHAEL R COLLINS, an individual,
LA JOLLA-FAY ST LTD, DBA "Inn
by the Sea at La Jolla", a partnership, and
DOES 1 through 25, Inclusive,

Defendants.

Case No. 37-2021-00032982-CU-OE-CTL

**DECLARATION OF JUSTIN HEWGILL
IN SUPPORT OF APPROVAL OF
SETTLEMENT**

Date: August 31, 2022

Time: 8:30 a.m.

Dept.: C-74

Judge: Hon. Keri Katz

Complaint Filed: August 3, 2021

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I, Justin Hewgill, hereby declare and say:

1. I am an attorney duly licensed to practice in California and am a partner at Hewgill Cobb & Lockard, APC, counsel of record for Plaintiffs in this action. The following information is based upon my personal knowledge. If called upon to do so, I could and would competently testify to the truth of the matters stated herein.

I. NATURE OF THE CASE

2. This action involves two former employees of a small hotel (Inn by the Sea, La Jolla) who brought action for both wage and hour violations (meal breaks, rest breaks, off the clock work, and derivative violations of failure to pay wages upon termination and failure to provide accurate wage statements), as well as racial harassment and discrimination claims under the Fair Employment and Housing Act (FEHA).

II. DISCOVERY AND INVESTIGATION

3. Parties engaged in early informal discovery and scheduled mediation. As part of this informal discovery Defendant shared a sampling of the aggrieved employees pay and time records, as well as relevant policies. Defendants provided pay-stubs, clock in and out records, and pay spreadsheets for the 50% of the aggrieved employee group.

4. Plaintiffs also provided explanation of the factual and legal basis of all of their claims in writing, and further provided answers to specific questions proffered by counsel.

III. MEDIATION AND RESOLUTION

5. Mediation was held May 25, 2022 with Stephen McAvoy. All matters were settled at this mediation. The PAGA portion was estimated 55 aggrieved employees, and 918 unique pay periods, during the period of May 27, 2020 through the putative approval this settlement. \$30,000.00 was attributed to settle PAGA period.

6. This mediation was arms-length and without collusion.

7. The PAGA Settlement is attached as Exhibit A to this Declaration.

IV. NOTIFICATION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY, & THE AGENCY'S INTERVENTION INTO THE SETTLEMENT IN THIS MATTER.

1 8. The PAGA notice in this matter was provided to the LWDA through its web-
2 portal on May 27, 2021.

3 9. Notice of Settlement. I provided notice of the settlement as proposed by this
4 declaration and motion to the LWDA today, August 30, 2022 through the LWDA's web-portal.

5 **V. QUALIFICATIONS OF COUNSEL**

6 10. I have a bachelor's degree from the University of California, Riverside both a BA in
7 Political Science and a BA in Fine Art. I graduated with a Juris Doctorate from the University of
8 California, Berkeley School of Law (formally Boalt Hall), in May of 2008.

9 11. I have been licensed to practice law, and have practiced law in the State of California
10 since December, 2008. In 2015, my partners and I started the law firm, which is now styled
11 Hewgill Cobb Lockard, APC (formally the Law Office of Hewgill and Cobb). I am currently an
12 equity partner in this firm. Since starting this firm and prior to that, I have devoted my practice to
13 employment law both wage and hour Class Action and Private Attorney General Act litigation
and FEHA matters.

14 12. I successfully represented plaintiffs in wage and hour Class Actions in the following
15 matters in the Superior Court for the County of San Diego: 37-2016-00036639-CU-OE-CTL,
16 GATES vs MISSION BAY SPORTS CENTER; 37-2017-00012951-CU-OE-CT,
17 BUCKHANNON vs STONES; (37-2019-00013863-CU-OE-CTL, ASPEYTIA V MA
18 MORTENSON COMPANY. My office currently represents plaintiffs in the wage and hour
19 Class Action 37-2019-00011626-CU-OE-CTL, GUZMAN V ALLAN COMPANY). My office
20 represented intervening plaintiffs, and successfully amended the settlement agreement in 3:16-
21 cv-02162-JLS-NLS, NUNEZ v. BAE SYSTEMS SAN DIEGO SHIP REPAIR INC. Finally, my
22 office also currently represents plaintiffs or successfully represented plaintiffs in the following
23 collective action, Private Attorney General Act (PAGA) matters: 37-2018-00037315-CU-OE-
24 CTL, EBBA vs SHARP HEALTHCARE; 37-2018-00043367-CU-WT-CTL, HERNANDEZ vs
25 CALIFORNIA GAS TRANSPORT INC; and MCC1800266, HUERTA vs VIN
26 HOSPITALITY; 37-2019-00034623-CU-WT-CTL AGUIRRE vs 860 GARNET
27 OPERATIONS; 37-2020-00022617 MARTINEZ vs OMNI HOTELS MANAGEMENT; 37-
28 2020-00033834-CU-OE-CTL, CARBAUGH vs HEALTH IQ; GARCIA vs LUXOTTICA
RETAIL NORTH AMERICA; 20-CV-1241-AJB-WVG SCALICE vs SALES PARTNERSHIP,

INC.; 37-2020-0032941-CU-OE-CTL SCHLUTER vs BELLA BABY SOCAL, LLC.

13. My billable rate is \$625.00 an hour.

VI. FEES ARE REASONABLE

14. The retainer agreement between my firm, co-counsel and named Plaintiffs calls for a 40% contingency fee. However, in the interest of justice we have not sought that full amount here.

15. Here Plaintiff seeks 7,500.00, amounting to 25% of the PAGA corpus. Plaintiff's counsel has not provided a lodestar estimate, but will do so, if asked to do so by the Court.

16. The Parties have conducted significant investigation of the facts and law relating to this dispute. Such investigation has included, inter alia, the production and analysis of Defendant's employee handbooks, timekeeping, sick leave policies, analysis of Plaintiff's timekeeping and pay records, and a full day of deposition testimony by Plaintiff. Plaintiff conducted multiple depositions and participated in a full day of mediation. Plaintiff opposed a Motion for Summary Judgement.

17. Plaintiff's counsel interviewed numerous members of the Aggrieved Employee group.

VII. COSTS INCURRED

18. Plaintiff's counsel did incur costs in this matter, however no costs are attributed to the PAGA portion of this case.

19. However, Plaintiff's counsel has acquired a bid for administration of this matter, at \$2,500.00 which parties do request to take from the corpus of the PAGA settlement.

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct. Executed this 30th day of August, 2022 in San Diego, California.



Justin Hewgill

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This Stipulation of Settlement (“PAGA Settlement Agreement”) is made by and between Named Plaintiffs ELVIA RIOS and ALEJANDRA ESPINOZA (“Plaintiffs”), on their own behalf and on behalf of all members of the PAGA Group, as defined below, and Defendants MICHAEL R. COLLINS and LA JOLLA–FAY STREET LTD, A CALIFORNIA LIMITED PARTNERSHIP (collectively, “Defendants”) erroneously sued as LA JOLLA–FAY ST LTD, DOING BUSINESS AS “INN BY THE SEA AT LA JOLLA,” in the lawsuit entitled *Alejandra Espinoza, et al. v. Michael R. Collins, et. al.*, San Diego Superior Court Case No. 37-2021-00032982-CU-OE-CTL (the “Litigation”). The term “Party” or “Parties” as used herein shall refer to Plaintiffs, Defendants, or both, as may be appropriate. This PAGA Settlement Agreement resolves all claims for PAGA civil penalties that were asserted or could have been asserted against Defendants pertaining to the claims in the Litigation.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this PAGA Settlement Agreement.

B. Agreement, Settlement Agreement, or Settlement. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean the agreement reflected in this document, titled “PAGA Settlement Agreement.”

C. Attorney’s Fees and Costs. In the amount not to exceed Seven-Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), as approved by the Court and awarded to Plaintiffs’ Counsel. The Attorney’s Fees and Costs shall be paid from the Settlement Amount and will not be opposed by Defendants.

D. Court. The term “Court” as used herein means the Superior Court of the State of California for the County of San Diego.

E. Date of Approval. The terms “Date of Approval” or “Approval” as used herein mean the date of the Court enters judgment granting approval of the PAGA Settlement Agreement.

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1 **F. Defendants.** The term “Defendants” as used herein means: MICHAEL COLLINS and
2 LA JOLLA–FAY STREET LTD, A CALIFORNIA LIMITED PARTNERSHIP, erroneously sued as La
3 Jolla-Fay St Ltd, doing business as “Inn by the Sea at La Jolla.”

4 **G. Litigation.** The term “Litigation” as used herein means the action entitled filed in San
5 Diego Superior Court, Case No. 37-2021-00032982-CU-OE-CTL.

6 **H. LWDA.** The California Labor and Workforce Development Agency.

7 **I. LWDA Payment.** The term “LWDA Payment” as used herein means seventy-five percent
8 (75%) of the Net Settlement Amount.

9 **J. Named Plaintiffs.** The term “Named Plaintiffs” as used herein means ELVIA RIOS and
10 ALEJANDRA ESPINOZA. The term Named Plaintiffs shall be used synonymously with the term PAGA
11 Representative.

12 **K. Net Settlement Amount.** The term “Net Settlement Amount” as used herein means the
13 remainder of the Settlement Amount after the deduction of any award of Attorney’s Fees and Costs, and
14 Administrative Costs, and as provided in Sections X and VI, respectively.

15 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
16 payments made to the PAGA Group under the terms of the Agreement.

17 **M. PAGA.** The California Private Attorney General Act of 2004, Labor Code section 2698
18 *et. seq.*

19 **N. PAGA Group.** The PAGA Group is defined as: All persons who are or were employed
20 by Defendants in the State of California that were classified as non-exempt employees at any time within
21 the PAGA Period. The Parties estimated for purposes of mediation that there are approximately 55
22 individuals in the PAGA Group, who worked an aggregate total of approximately 918 pay periods during
23 the PAGA Period, all of which shall be confirmed by the Settlement Administrator.

24 **O. PAGA Period.** The term “PAGA Period” or “Settlement Period” shall refer to the time
25 period from May 27, 2020, to the date of settlement approval.

26 **P. Plaintiffs’ Counsel.** The term “Plaintiffs’ Counsel” as used herein means: Justin Hewgill,
27 who is counsel for and acting on behalf of Named Plaintiffs.

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1 **Q. Plaintiffs’ Individual Claims.** The term “Plaintiffs’ Individual Claims” as used herein
2 means Plaintiffs’ individual claims for violation of the Discrimination Based on Race, Ethnicity, and/or
3 Origin; Harassment Based on Race, Ethnicity, and/or National Origin; Failure to Prevent Discrimination
4 and Harassment; Negligent Supervision; Retaliation; Wrongful Termination in Violation of Public Policy;
5 Unfair Competition; and individual claims for violations of the California Labor Code, as outlined in the
6 Complaint and/or separately asserted.

7 **R. Settlement Administrator.** The term “Settlement Administrator” as used herein means
8 ILYM Group, Inc., which will be responsible for the Settlement Distribution, as defined below, and all
9 related matters.

10 **S. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement Fund” as
11 used herein mean a fund in the sum of Thirty Thousand Dollars and Zero Cents (\$30,000.00), which shall
12 be paid by Defendants, and from which all Net Settlement Payments to the PAGA Group pursuant to
13 Section VIII, Court approved Attorneys’ Fees and Costs pursuant to Section X, Administrative Costs
14 pursuant to Section VI, and distribution to the LWDA Payment pursuant to Section VIII shall be paid,
15 except as provided herein.

16 **T. Settlement Distribution.** The Settlement Administrator shall disburse the Settlement
17 Amount pursuant to Section VIII(D). Under the terms of the Settlement Agreement, the Settlement
18 Administrator shall disburse: (1) the LWDA Payment to the LWDA; (2) the Net Settlement Payments to
19 the PAGA Group; (3) the Attorney’s Fee and Cost award to Plaintiffs’ Counsel; and (4) the
20 Administrative Costs, as approved by the Court.

21 **II. BACKGROUND**

22 **A.** On August 3, 2021, Plaintiffs filed a Complaint against Defendants, which is pending as
23 *Alejandra Espinoza, et al. v. Michael R. Collins, et al.*, San Diego Superior Court, Central Case No.: 37-
24 2021-00032982-CU-OE-CTL (the “Litigation”). In the Complaint, Plaintiffs asserted thirteen causes of
25 action against Defendants for: (1) Meal Period Violations Pursuant to Labor Code § 512 and 8 Cal. Code
26 of Regulations § 11050(11); (2) Failure to Authorize and Permit Rest Periods Violation Pursuant Labor
27 Code § 226.7 and 8 Cal. Code of Regulations § 11050(12); (3) Failure to Pay Regular and Overtime
28 Wages Violations Pursuant to Labor Code § 204, 510, and 1194; (4) Failure to Provide Accurate Wage

1 Statement Violations Pursuant to Labor Code § 226 et seq.; (5) Failure to Pay Wages Upon Termination
2 or Resignation Labor Code § 2201, 202, and 203; and (6) Discrimination Based on Race, Ethnicity,
3 and/or Origin; (7) Harassment Based on Race, Ethnicity, and/or National Origin; (8) Failure to Prevent
4 Discrimination and Harassment; (9) Negligent Supervision; (10) Retaliation; (11) Wrongful Termination
5 in Violation of Public Policy; (12) Unfair Competition; (13) Private Attorneys General Act (PAGA).

6 **B.** On May 27, 2021, Plaintiffs provided Defendants with a Private Attorney General Act
7 (“PAGA”) Notice to the Labor and Workforce Development Agency (“LWDA”) alleging wage and hour
8 PAGA violations against Defendants of the following Labor Code sections: 200, 201, 201.3, 202, 203,
9 204, 210, 510, 226, 226.3, 226.7, 245-249, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 1198, against
10 Defendants on Plaintiffs’ behalf and on behalf of other alleged aggrieved employees.

11 **C.** Following the filing of the Litigation, the Parties agreed to attend Mediation with Stephen
12 McAvoy. In furtherance of Mediation, Defendants subsequently informally provided Plaintiffs with
13 information regarding the total number of the putative PAGA Group, including how many of those
14 employees are former employees, and the total pay periods worked by the PAGA Group. Defendants also
15 provided Plaintiffs’ time and pay records, and a sampling of time and pay records of other putative PAGA
16 aggrieved employees.

17 **D.** Named Plaintiffs and Plaintiffs’ Counsel have engaged in good faith, arms-length
18 negotiations. On May 25, 2022, the Parties participated in a Mediation with Stephen McAvoy. The
19 Parties agreed to settle Plaintiffs’ PAGA Claims for Thirty Thousand Dollars and Zero Cents
20 (\$30,000.00). The Parties agreed to finalize a formal Settlement Agreement after the Mediation and to
21 seek Court Approval of the PAGA Settlement. The Parties have now entered into a more detailed,
22 formalized Settlement Agreement for submission to the Court for Approval.

23 **E.** Plaintiffs’ Counsel has conducted an investigation of the law and facts relating to the
24 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
25 involved, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks
26 and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of
27 complex litigation, and the substantial benefits to be received by the Named Plaintiffs and the members
28 of the PAGA Group pursuant to this Agreement, that a settlement with Defendants on the terms and

conditions set forth herein is fair, reasonable, adequate, and in the best interests of the PAGA Group. Named Plaintiffs, on their own behalf and as a representative pursuant to PAGA, has agreed to settle the Litigation with Defendants on the terms set forth herein.

F. Defendants have concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to their business operations, it is in its best interests to accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted against it in the Litigation. However, Defendants nevertheless desire to settle the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

G. This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations and claims that were asserted, or could have been asserted, in the Litigation by Named Plaintiffs. This Agreement does not cover Plaintiffs' Individual Claims, which have been resolved with a separate agreement.

III. JURISDICTION

The Parties agree that the Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Approval of the Agreement, pursuant to California Code of Civil Procedure Section 664.6 the Parties agree that the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Agreement consistent with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders and judgments entered in connection therewith.

IV. STATEMENT OF NO ADMISSION

A. Defendants deny liability to Named Plaintiffs and to the PAGA Group upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Litigation.

1 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
2 statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used
3 during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute,
4 nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case
5 or any other judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of
6 any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or
7 any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit
8 this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative,
9 investigative, or other forum or proceeding, as purported evidence of any violation of any federal, state,
10 or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in
11 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any
12 proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of
13 this Agreement or any orders or judgments of the Court entered in connection with this Agreement.

14 **C.** None of the documents produced or created by Named Plaintiffs or the PAGA Group in
15 connection with the claims procedures or claims resolution procedures constitute, and they are not
16 intended to constitute, an admission by Defendants of any violation of any federal, state, or local law,
17 statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

18 **D.** Nothing in this Agreement will be construed as an admission or acknowledgement of any
19 kind that any group should or would be given class, collective, or representative treatment in the
20 Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions
21 with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of
22 collective treatment. In the event that this Agreement is not approved by the Court or any appellate court,
23 is terminated, or otherwise fails to be enforceable, Named Plaintiffs will not be deemed to have waived,
24 limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendants will not
25 be deemed to have waived, limited, or affected in any way any of their objections or defenses in the
26 Litigation.

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1 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

2 **A. Release as to All PAGA Group Members.**

3 Upon Approval by the Court of this Settlement, Plaintiffs, on behalf of the State of California
4 and, in a representative capacity, on behalf of each member of the PAGA Group, release any and all
5 claims and causes of action under the California Private Attorneys' General Act of 2004, California Labor
6 Code Section 2698 (PAGA) against Defendants, Royal Inn of La Jolla, A California Limited Partnership,
7 doing business as "Inn by the Sea at La Jolla," any of their present and former partners, be they general
8 or limited partners, officers, directors, and employees,, including, Michael Collins, Delton Stevens and
9 Thomas Stanford, and agents thereof, both individually and in their business capacities, ("Released
10 Parties"), arising out of the facts and claims asserted in the Litigation for civil penalties under PAGA
11 based upon any of Named Plaintiffs' allegations or claims, under any legal theory of liability, in any
12 forum, and all claims for statutory penalties that could have been sought by the Labor Commissioner for
13 the violations identified in Plaintiffs' pre-filing letter to the LWDA. Released claims include, but are not
14 limited to: failure to minimum wages; failure to pay overtime wages; failure to provide meal periods;
15 failure to provide rest periods; failure to pay wages due at termination; failure to provide accurate
16 itemized wage statements; failure to pay employees timely; and PAGA claims for civil penalties due to
17 the alleged Labor Code violations and by Defendants during the PAGA Period including California Labor
18 Code sections 201-204, 210, 216, 218.5, 224, 225.5, 226, 226.3, 226.4, 226.6, 226.7, 245-249, 510, 512,
19 558, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2699, and their subsections,
20 all applicable IWC Wage Order 5-2001; penalties that could have arisen out of the facts alleged in the
21 Complaint ("Released Claims"). The release shall cover the PAGA Period through to the execution of
22 an Order by the Court approving this settlement. This release extends only to remedies available through
23 PAGA and does not release Plaintiffs' Individual Claims, which are subject to a separate Confidential
24 Settlement Agreement and General Release of All Claims.

25 **B. Publicity.**

26 The Named Plaintiffs and their counsel agree that they have not and will not publish this
27 Agreement. More specifically, Named Plaintiffs and their counsel agree that they will not report the
28 Settlement in any medium or in any publication, shall not post or report anything regarding the claims of

1 Named Plaintiffs or the Settlement on any website, and shall not contact any reporters or media regarding
2 the Settlement. However, nothing in the provision shall be construed from as preventing the Parties from
3 taking following actions: (a) Named Plaintiffs' Counsel shall be allowed to refer to the Litigation and
4 Agreement in other litigations to support their adequacy as attorneys for a putative class or to justify an
5 award of attorney's fees; (b) the Parties shall have the right to disclose the Agreement as may be required
6 under federal or state tax and/or securities laws or under Generally Accepted Accounting Principles; (c)
7 the Parties may refer to the Agreement, describe its terms, and file the settlement agreement with the
8 Court, the California LWDA, and the Settlement Administrator in connection with any proceedings that
9 are reasonably necessary to obtain Approval of the Settlement; and (d) the Parties or their representatives
10 may communicate with accountants or legal advisors regarding the Agreement. Except for the previously
11 listed exceptions, in response to any inquiries about the Litigation, the Parties may state that "the case
12 was resolved, and it was resolved confidentially."

13 **VI. SETTLEMENT ADMINISTRATOR**

14 Named Plaintiffs and Defendants, through their respective counsel, have selected ILYM Group,
15 Inc. as the Settlement Administrator to administer the Agreement. The Settlement Administrator shall be
16 responsible for calculating and mailing all the amounts to be paid as the Net Settlement Payments and
17 distributing them to the PAGA Group; calculating and mailing the LWDA Payment to the LWDA;
18 distributing the Attorney's Fees and Costs awarded to Plaintiffs' Counsel; printing and providing the
19 PAGA Group with IRS forms 1099, as required under this Agreement and applicable law; providing any
20 funds remaining from the Net Settlement Amount as a result of uncashed checks to the California State
21 Controller's Office - Unclaimed Property Fund; payment to itself Administrative Costs approved by the
22 Court; providing updates to Defendants' Counsel and Plaintiffs' Counsel regarding the funding and
23 disbursement of the Settlement Amount; and for such other tasks as the Parties mutually agree.

24 The Administrative Costs, which are the charges and expenses of the Settlement Administrator
25 in administering this Settlement, are estimated to be Two Thousand Five Hundred Dollars and Zero Cents
26 (\$2,500.00) and will be paid from the Settlement Amount. Any charges and expenses of the Settlement
27 Administrator greater than the allocated Two Thousand Five Dollars (\$2,500.00) will come from the
28 Settlement Amount. If the actual Settlement Administrator fees are less than the Parties' estimation, the

1 difference between the actual and estimated Settlement Administrator fees will be included in the Net
2 Settlement Amount.

3 **VII. NOTICE OF SETTLEMENT TO LWDA**

4 Named Plaintiffs, through their attorney, shall within one (1) business day upon execution of the
5 Agreement provide written notice of the settlement of the Litigation to the LWDA. Plaintiffs' counsel
6 shall provide Defense counsel with a copy of the written notice of the Litigation settlement sent to the
7 LWDA to within three (3) business days of the notice being sent. The provision of notice of the settlement
8 of the Litigation to the LWDA is a condition precedent to this Settlement.

9 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

10 **A. Net Settlement Payment Distribution Formula.**

11 The Net Settlement Amount of approximately Twenty Thousand Dollars and Zero Cents
12 (\$20,000.00)) is allocated to satisfy the PAGA penalties claim as alleged in the Complaint. Members of
13 the PAGA Group will receive a lump sum Net Settlement Payment as good and valuable consideration
14 for the waiver and release of claims set forth in Section V(A), above, in an amount determined by the
15 Settlement Administrator in accordance with the provisions of this Agreement.

16 The lump sum Net Settlement Payment to each member of the PAGA Group will be determined
17 by dividing twenty-five percent (25%) of the Net Settlement Amount by the total number of pay periods
18 worked by all members of the PAGA Group during the Settlement Period (the "Pay Period Amount")
19 and then multiplying the Pay Period Amount by the number of pay periods worked by the individual
20 PAGA member.

21 **B. Funding of the Settlement.**

22 The funding of the Settlement Amount will be completed at one (1) time with funds provided to
23 and escrowed by the Settlement Administrator. The funds used for the Settlement Amount shall be paid
24 to the Settlement Administrator by Defendants within thirty (30) calendar days of its receipt of a notice
25 of entry of the Court's Approval order.

26 **C. Uncashed Checks.**

27 If a PAGA Group member is deceased at the time of distribution, the Settlement Administrator
28 shall notify the executor of the deceased PAGA Group member's estate and, if appropriate, place the

deceased PAGA Group member's payment in escrow or similar disposition such that any competing heirs may take whatever action they wish to resolve ultimate disposition of such money and the Settlement Administrator and the Parties hereto may disclaim any further interest in or obligation in relation to such money.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check shall be turned over according to the below procedures.

Settlement checks will specifically indicate that they are void if not negotiated within one hundred eighty (180) days of their issuance. Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall be voided. The Settlement Administrator will remit the entire amount of each PAGA Group member's uncashed Net Settlement Payment to the California State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed Net Settlement Payment was drafted.

D. Disbursement of Settlement.

Subject to the terms and conditions of this Agreement, within ten (10) calendar days after receipt of the Settlement funds from Defendants, the Settlement Administrator shall disburse the Settlement Amount as follows:

1. **To The PAGA Group Members.** The Settlement Administrator will pay the PAGA Group members their Net Settlement Payments according to the distribution formula set forth above.

2. **To the LWDA.** Seventy-five percent (75%) of the Net Settlement Amount (approximately \$15,000.00) shall be paid to the LWDA.

3. **To Plaintiffs' Counsel.** Plaintiffs' Counsel will apply to the Court for, and Defendants agree not to oppose, a total award for Attorney's Fees and Costs not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). The Settlement Administrator will pay the court-approved amounts of the Attorney's Fees and Costs award out of the Settlement Amount. IRS Forms 1099 will be issued to Plaintiffs' Counsel with respect to the Attorney's Fees and Costs award. In the event the Court

1 does not approve the entirety of the application for the Attorney's Fees and Costs requested, the
2 Settlement Administrator shall pay whatever amount the Court awards, the difference shall become part
3 of the Net Settlement Amount.

4 4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself
5 Administrative Costs (reasonable fees and expenses) approved by the Court.

6 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

7 The amounts paid under this Agreement do not represent a modification of any previously
8 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by
9 Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any
10 other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendants, policies,
11 or bonus programs. Any payments made under the terms of this Agreement shall not be applied
12 retroactively, currently, or on a going forward basis as salary, earnings, wages, or any other form of
13 compensation for the purposes of Defendants' benefit plan, policy, or bonus program. Defendants retain
14 the right to modify the language of their benefit plans, policies, and bonus programs to effect this intent
15 and to make clear that any amounts paid pursuant to this Agreement are not for "hours worked," "hours
16 paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and
17 bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that
18 additional contributions or benefits are not required by this Agreement.

19 **X. PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND LITIGATION COSTS**

20 Defendants shall not oppose an application by Plaintiffs' Counsel for, and Plaintiffs' Counsel
21 shall not seek or receive an amount in excess of Seven Thousand and Five-Hundred Dollars and Zero
22 Cents (\$7,500.00) for all past and future Attorney's Fees and Costs necessary to prosecute, settle, and
23 administer the Litigation and this Agreement. Any Attorney's Fees and Costs awarded to Plaintiffs'
24 Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the
25 Net Settlement Amount. This amount shall include all attorneys' fees, Litigation costs, and expenses for
26 which Named Plaintiffs and Plaintiffs' Counsel could claim under any legal theory whatsoever. Should
27 the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that
28 Plaintiffs' Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net

Settlement Amount.

XI. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount and any Net Settlement Payments paid therefrom, shall be deemed, and are allocated by the Parties 100% as penalties. All PAGA Group members 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).

XII. COURT APPROVAL

This Agreement is contingent upon Approval by the Court. Named Plaintiffs and Defendants agree to take all steps as may be reasonably necessary to secure Approval of the Agreement, to the extent not inconsistent with the terms of this Agreement and will not take any action adverse to each other in obtaining Court Approval of this Agreement in all respects.

XIII. APPRISAL AND CERTIFICATION BY THE SETTLEMENT ADMINISTRATOR.

The Settlement Administrator shall keep Plaintiffs' Counsel and Defendants' Counsel apprised of all distributions from the Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Plaintiffs' Counsel and Defendants' Counsel. The Settlement Administrator shall also provide Defendants with a final accounting, including the names of payees and their respective Net Settlement Payments received.

XIV. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

Named Plaintiffs and Defendants agree to the stay of all discovery in the Litigation, pending Approval of the Agreement by the Court.

B. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Named Plaintiffs and Defendants. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic

evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Diego and Named Plaintiffs and Defendants hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any other agreements signed by employees of Defendants. Named Plaintiffs, on their own behalf and on behalf of the PAGA Group, and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiffs nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Named Plaintiffs and Defendants with respect to the Settlement of the Litigation. The Agreement may be modified only by a writing signed by counsel for all Parties or their successors-in-interest.

C. Further Cooperation.

Named Plaintiffs and Defendants and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek Approval from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

D. Confidentiality of Documents.

Named Plaintiffs, the Settlement Administrator, and Plaintiffs' Counsel shall maintain the confidentiality of all documents, deposition transcripts, declarations, and other information obtained in the Litigation, unless necessary for appeal or such documents are ordered to be disclosed by the Judge or by a subpoena.

E. Counterparts.

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

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1 **F. Authority.**

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

4 **G. No Third-Party Beneficiaries.**

5 Named Plaintiffs, members of the PAGA Group, Defendants, and Released Parties are direct
6 beneficiaries of this Agreement, but there are no third-party beneficiaries.

7 **H. Force Majeure.**

8 The failure of any party to perform any of its obligations hereunder shall not subject such party
9 to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part
10 by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars,
11 interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material
12 or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures
13 to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable
14 control of such party.

15 **I. Deadlines Falling on Weekends or Holidays.**

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

18 **J. Severability.**

19 In the event that any one or more of the provisions contained in this Agreement shall for any
20 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
21 unenforceability shall in no way effect any other provision if Defendants' Counsel and Plaintiffs'
22 Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such
23 invalid, illegal, or unenforceable provision had never been included in this Agreement.

24 **K. Defendants' Fees and Costs**

25 All of Defendants' own legal fees, costs, and expenses incurred in this Action shall be borne by
26 Defendants.

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M. No Tax or Legal Advice.

N. Amendment or Modification of Agreement.

[Signatures to follow on next page]

1 Dated: 8-26, 2022


Plaintiff ALEJANDRA ESPINOZA

3 Dated: 8-26, 2022


Plaintiff ELVIA RIOS

5 Dated: 8-26, 2022


By: Michael R. Collins, on behalf of
LA JOLLA-FAY STREET LTD, A CALIFORNIA
LIMITED PARTNERSHIP

8 Dated: 8-26, 2022


By: Michael R. Collins, on behalf of
MICHAEL R. COLLINS

12 APPROVED AS TO FORM ONLY:

14 Dated: 8-26, 2022

HEWGILL, COBB & LOCKARD, APC


Justin Hewgill, Esq.
Attorney for Plaintiffs

19 Dated: August 29, 2022

JACKSON LEWIS PC


Robert Murphy, Esq.
John Nordlund, Esq.
Solin Melahaji, Esq.
Attorney for Defendants
MICHAEL R. COLLINS and
LA JOLLA-FAY STREET LTD, A CALIFORNIA
LIMITED PARTNERSHIP