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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

JOSE LUIS OLIVEROS,

Plaintiff,

v.

SHARK ISLAND YACHT CLUB, a
California Non-Profit Corporation, d.b.a.
NEWPORT BEACH YACHT CLUB,
PATRICK ALLEN RAMSEY, ANTON
ANICH, BRIANA N. WARREN, and DOES 1
through 5,

Defendants.

CASE NO. 30-2021-01210803-CU-OE-CJC
[Assigned for All Purposes to the Hon. David
Hesseltine; Dept. C23]

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE OF
CLAIMS**

1 This Joint Stipulation of PAGA Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff JOSE LUIS OLIVEROS (“Plaintiff”
3 or “PAGA Representative”), individually and on behalf of all putative PAGA members as the
4 representative of the California Labor and Workforce Development Agency, the LWDA, and the
5 State of California, and Defendant SHARK ISLAND YACHT CLUB d.b.a. NEWPORT BEACH
6 YACHT CLUB (“Defendant”). Plaintiff and Defendant are collectively referred to herein as “the
7 Parties.”

8 **I. DEFINITIONS**

9 The following definitions, in addition to other terms defined elsewhere, apply to this
10 Settlement:

- 11 1. “Superior Court” means the Superior Court of California for the County of Orange.
- 12 2. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violation against
13 defendants captioned *Jose Luis Olivero, Plaintiff v. Shark Island Yacht Club d.b.a. Newport Beach*
14 *Yacht Club, et al., defendants*, pending in the Superior Court of California, Orange County, Case
15 No.30-2021-01210803-CU-OE-CJC. The PAGA claim is alleged as the eighth cause of action of the
16 operative first amended complaint filed on September 27, 2021.
- 17 3. “LWDA” means the California Labor and Workforce Development Agency.
- 18 4. “PAGA” means the Private Attorneys General Act of 2004 (Labor Code §§ 2698 et seq.).
- 19 5. “PAGA Counsel” means Rudy Ginez, Jr., Esq. of Rudolfo Ginez Law Office, the attorney
20 representing Plaintiff in the Action.
- 21 6. “Defense Counsel” means the attorneys representing Defendant in the Action, Clint Robison,
22 Esq. and Michael Kessler, Esq. of O’Hagan Meyer.
- 23 7. “PAGA Period” means the time period from July 1, 2020, through July 31, 2021.
- 24 8. “Aggrieved Employee” means a person employed by Defendant in California as a salaried or
25 hourly-paid, nonexempt employee during the PAGA Period.
- 26 9. “Settlement Administrator” means CPT Group, Inc., (“CPT”) the neutral entity the Parties
27 have agreed to appoint to administer the Settlement.

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1 10. "Gross Settlement Amount" means the Gross Settlement Amount of \$125,569.93 payable by
2 Defendant as provided by this Agreement.

3 11. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments
4 in the amounts approved by the Superior Court: the LWDA PAGA Payment, PAGA Counsel Fees
5 Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the
6 Administration Expenses Payment. This remainder is to be paid to Aggrieved Employees as
7 Individual PAGA Payments.

8 12. "PAGA Penalties" means the total amount of PAGA civil penalties (i.e., \$56,000.00) to be
9 paid from the Net Settlement Amount, allocated 75% (i.e., \$42,000.00) to LWDA and 25% (i.e.,
10 \$14,000.00) to the Aggrieved Employees in settlement of the PAGA claims.

11 13. "LWDA PAGA Payment" means the payment of 75% of the PAGA Penalties (i.e.,
12 \$42,000.00) to the LWDA under this Settlement and pursuant to Labor Code § 2699(i).

13 14. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the
14 PAGA Penalties calculated according to the total number of pay periods the Aggrieved Employee
15 allegedly suffered a meal period violation during the PAGA Period.

16 15. "PAGA Counsel Fees Payment" means the amount allocated to PAGA Counsel for attorney
17 fees incurred to prosecute the Action. Defendant has agreed not to oppose PAGA Counsel's request
18 for attorney fees for an amount not exceeding 35.84% of the Gross Settlement Amount, i.e., not more
19 than \$45,000.00.

20 16. "PAGA Counsel Litigation Expenses Payment" means the amount allocated to PAGA
21 Counsel for expenses incurred to prosecute the Action. PAGA Counsel Litigation Expenses are not
22 to exceed \$16,569.93.

23 17. "PAGA Representative Payment" means the special payment made to Plaintiff in his capacity
24 as PAGA Representative to compensate him for prosecuting the Action, and performing work in
25 support of the Action in the amount of \$3,000.00.

26 18. "Administration Expenses Payment" means the payment to the Settlement Administrator for
27 its fees and expenses in administering this Settlement in an amount not to exceed \$5,000.00.

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1 19. "Notice of PAGA Action Settlement" means the Notice of Settlement and Approval, a sample
2 of which is attached hereto as Exhibit A. The Notice of PAGA Action Settlement shall contain the
3 Aggrieved Employee's (i) first and last name, (ii) last known mailing address, (iii) last four digits of
4 their social security number, (iv) employee identification number, if applicable, (v) number of pay
5 periods they allegedly suffered a meal period violation during the PAGA Period; and (vi) the amount
6 of the Aggrieved Employee's individual share of 25% of the PAGA Penalties.

7 20. "Effective Date" means the date by which this Settlement is approved by the Superior Court
8 by entry of the Judgment and the Judgment becomes Final. If no appeal is filed, the Effective Date
9 shall occur 60 days from entry of Judgment by the Superior Court. If a timely appeal is filed, the
10 Judgment shall become final on the date all appeals from the Judgment have been fully adjudicated.
11 The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any
12 funds into the Settlement Account.

13 21. "Judgment" means the Order of Final Judgment entered by the Superior Court that the Parties
14 anticipate will be entered following an Approval Hearing on the Settlement in this Action.

15 **II. RECITALS**

16 1. On July 14, 2021, PAGA Counsel, on behalf of Plaintiff and the Aggrieved Employees, gave
17 written notice to Defendant and the LWDA of the Labor Code violations Defendant is alleged to
18 have violated ("PAGA Letter"). The LWDA did not respond to the PAGA Letter.

19 2. On July 16, 2021, Plaintiff filed his individual wage and hour action against Defendant in the
20 Orange County Superior Court. On September 27, 2021, Plaintiff filed the operative first amended
21 complaint alleging causes of action for (1) failure to provide meal periods, (2) failure to provide rest
22 periods, (3) failure to pay overtime, (4) failure to provide accurate wage statements, (5) failure to
23 pay all final wages, (6) failure to permit inspection of records, (7) unlawful business practices in
24 violation of § 17200 of the California Business and Professions Code, (8) civil penalties for violation
25 of Labor Code § 2698, et seq. (PAGA), and (9) personal liability under Labor Code § 558.1 ("First
26 Amended Complaint").

27 3. Defendant denies and continues to deny all of Plaintiff's material allegations. Specifically,
28 Defendant contends (1) it provided the Aggrieved Employees with all meal periods according to law;

(2) it provided the Aggrieved Employees with all rest periods according to law; (3) it did not fail to pay the Aggrieved Employees overtime compensation; (4) it provided the Aggrieved Employees with accurate itemized wage statements, consistent with Labor Code Section 226; (5) it did not fail to timely pay the Aggrieved Employees wages due and owing upon separation; (6) it permitted Plaintiff to inspect and obtain all requested records allowable under California law; (7) it did not violate Business & Professions Code Section 17200, et seq.; (8) the Aggrieved Employees are not entitled to penalties under PAGA; and (9) Defendant is not liable for damages, including meal period premium wages, rest period premium wages, prejudgment interest, unpaid wages, penalties, restitution, attorneys' fees, or costs of litigation to the Aggrieved Employees.

4. In connection with the discovery process in the Action, Defendant produced voluminous documents and data, including, human resources documents and policies, time records, and payroll data during the PAGA Period to Plaintiff which were reviewed, investigated, and analyzed by PAGA Counsel. Detailed analysis of the documents and legal analysis has permitted the Parties to assess the relative merits of the claims and defenses to the PAGA claim.

5. On July 14, 2023, the parties participated in a half-day mandatory settlement conference with Temporary Judge Anne Redcross Beehler which culminated in a settlement of the entire Action.

6. The Settlement described in this Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any liability to Plaintiff, the Aggrieved Employees, or the State on those claims, or as an admission by Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Settlement.

7. Based on its own thorough, independent investigation and evaluation of this case, PAGA Counsel believes that the Settlement of this Action with Defendant for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interest of the Aggrieved Employees in light of all known facts and circumstances, including the risk of significant costs and delay, the defenses asserted by Defendant including the risks of adverse determinations on the merits

1 and numerous potential appellate issues. Although Defendant contends that it has no liability in the
2 Action, Defense Counsel shares PAGA Counsel's belief that the Settlement represents a fair and
3 adequate settlement given the respective risks associated with the case.

4 8. Based on the foregoing Recitals, the Parties agree as follows:

5 **III. PROCEDURE FOR APPROVING SETTLEMENT**

6 1. **Motion for Approval of Settlement.** Plaintiff will move the Superior Court for an order
7 approving the Settlement and the "Notice of PAGA Action Settlement" (attached hereto as **Exhibit**
8 **A**). The motion for approval will be filed within 30 days of the execution of this Agreement. The
9 Parties will meet and confer first regarding the Notice of PAGA Action Settlement or other
10 documents necessary to implement the Settlement before requesting Superior Court intervention
11 regarding unresolved disagreements.

12 2. The Parties anticipate that they will appear at the hearing to support the granting of the Motion
13 for Approval of the Settlement and the Notice of PAGA Action Settlement.

14 3. Should the Superior Court require any amendments to this Agreement or the Motion for
15 Approval, the Parties agree to work jointly to resolve any issues to secure the Superior Court's
16 Approval.

17 4. Should the Superior Court decline to approve any material aspects of the Settlement, the
18 Settlement will be null and void and the Parties will have no further obligations under it. In such
19 event, the Parties shall be returned to their respective positions as of the date and time immediately
20 before the execution of this Agreement, and the Parties shall proceed in all respects as if this
21 Agreement had not been executed.

22 5. Upon approval of the Settlement by the Superior Court, the Parties will present for the
23 Superior Court's approval and entry of a Proposed Final Order and Judgment. The entry of the Order
24 and Judgment shall permanently bar all Aggrieved Employees from prosecuting against Defendant
25 any claims or causes of action of any kind through the PAGA Period, which were or could have been
26 brought in this Action, whether known or unknown, as well as all claims described in the Release
27 contained in Paragraph 1 of Section V of this Agreement.

28 6. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the

1 Action and the Settlement solely for purposes of (i) enforcing this Settlement, (ii) addressing
2 settlement administration matters, and (iii) addressing such post-Judgment matters as may be
3 appropriate under court rules or applicable law.

4 **7. Notice of PAGA Action Settlement.** After the Superior Court enters its order granting
5 Approval, every Aggrieved Employee will be provided with the Notice of PAGA Action Settlement
6 (in English and Spanish) which will include the Notice of PAGA Action Settlement completed to
7 reflect the order granting Approval of the Settlement and the Aggrieved Employee's information as
8 follows:

9 a) Within 14 days after the Motion for Approval is granted, Defendant will provide to
10 the Settlement Administrator the "Aggrieved Employees' Data," which shall consist of an electronic
11 database containing (i) each Aggrieved Employee's first and last name, (ii) last known mailing
12 address, (ii) the Aggrieved Employee's Social Security number or Tax ID, and (iii) the Aggrieved
13 Employee's employee identification number, if applicable. Within 14 days after the Motion for
14 Approval is granted, PAGA Counsel will provide to the Settlement Administrator the total number
15 of pay periods each Aggrieved Employee allegedly suffered a meal period violation during the
16 PAGA Period. If any or all of the Aggrieved Employees' Data is incomplete or missing, Defendant
17 will so inform PAGA Counsel before the date on which Defendant is required to submit the
18 Aggrieved Employees' Data to the Settlement Administrator and the Parties will make their best
19 efforts to correct, update, reconstruct, or otherwise agree upon the Aggrieved Employees' Data
20 before it must be submitted to the Settlement Administrator. If the Parties are unable to agree, the
21 dispute will first be submitted to the Settlement Administrator, and if unable to be resolved by the
22 Settlement Administrator to the agreement of all Parties, the dispute shall be submitted to the
23 Superior Court. This information will otherwise remain confidential and will not be disclosed to
24 anyone, except as required to applicable taxing authorities, as required to carry out reasonable efforts
25 to identify the Aggrieved Employee's information as described in this Paragraph 7(b) below,
26 pursuant to Defendant's express written authorization, or by order of the Superior Court.

27 b.) If a Notice of PAGA Action Settlement is returned by the U.S. Postal Service because
28 of an incorrect address, the Settlement Administrator will promptly, and not later than 5 days from

1 receipt of the returned packet, search for a more current address for the Aggrieved Employee and re-
2 mail the Notice of PAGA Action Settlement to the Aggrieved Employee. The Settlement
3 Administrator will use the Aggrieved Employees' Data and otherwise work with Defense Counsel
4 or utilize its own resources such as skip traces to find a more current address. The Settlement
5 Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job
6 parameters, court orders, and fee, to trace the mailing address of any Aggrieved Employee for whom
7 a Notice of PAGA Action Settlement is returned by the U.S. Postal Service. These reasonable steps
8 shall include the tracking of all undelivered mail; performing address searches for all mail returned
9 without a forwarding address; and promptly re-mailing to Aggrieved Employees for whom new
10 addresses are found.

11 **8. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and
12 conditions of this Settlement, Plaintiff, Aggrieved Employees, Defendant, and their respective
13 counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-
14 judgment proceeding and appellate proceedings, such as a motion to vacate the judgment, a motion
15 for a new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and
16 the Judgment, therefore, will become non-appealable by them at the time it is entered. The waiver of
17 appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-
18 judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the
19 Settlement (including making payments under the Settlement) will be suspended until the appeal is
20 finally resolved and the Judgment, consistent with the terms of this Settlement, becomes Final.

21 **9. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after
22 a notice of appeal, a petition for review, a petition for certiorari, or any other motion, petition, writ,
23 or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a
24 material modification to the Settlement, and that court's decision is not completely reversed and the
25 Judgment is not fully affirmed on review by a higher court, then either Party will have the right to
26 void the Settlement, which the Party must do by giving written notice to the other Parties, the
27 reviewing court, and the Superior Court, not later than 14 days after the reviewing court's decision
28 vacating, reversing, or materially modifying the Judgment becomes final. A vacation, reversal, or

1 modification of the Superior Court's award of the PAGA Representative Payment, the PAGA
2 Counsel Fees Payment, and/or PAGA Counsel Litigation Expenses Payment will not constitute a
3 vacation, reversal, or material modification of the Judgment within the meaning of this paragraph.

4 **10. Establishment of Settlement Account.** The Settlement Administrator shall establish a
5 Settlement Account on or before June 14, 2024 or within 10 days of the Effective Date, whichever
6 is later, and notify the Parties when the Settlement Account has been established. The Settlement
7 Administrator shall also provide Defendant with an itemized statement for the total amount to be
8 deposited into the Settlement Account, which shall equal the Gross Settlement Amount of
9 \$125,569.93.

10 **11. Funding of Gross Settlement Amount.** On or before July 14, 2024 or within 15 days after
11 receiving notification of the Settlement Account and statement for the Settlement Account Deposit,
12 whichever is later, Defendant shall fully fund the Gross Settlement Amount by depositing
13 \$125,569.93 into the Settlement Account. Defendant shall have no obligation to pay any additional
14 funds into the Settlement Account or fully fund the Gross Settlement Amount by depositing
15 \$125,569.93 into the Settlement Account before July 14, 2024. The Parties discussed at the
16 mandatory settlement conference that Defendant shall have no obligation to fund the Gross
17 Settlement Amount until at least July 14, 2023, and the Parties agreed that this was a material term
18 of the Settlement.

19 **12. Payment of the Individual PAGA Payments.** The Settlement Administrator shall pay to
20 each Aggrieved Employee his or her Individual PAGA Payment from the Settlement Account by
21 sending a check in the appropriate amount to the Aggrieved Employee at the address indicated in the
22 Aggrieved Employees' Data. Such payment, with the Notice of PAGA Action Settlement, shall be
23 sent by the Settlement Administrator via U.S. Mail within 14 days after Defendant's deposit of the
24 Gross Settlement Amount into the Settlement Account.

25 **13. Uncashed Individual PAGA Payment Checks.** Any checks paid to Aggrieved Employees
26 shall be negotiable for no more than 180 calendar days from the date of their issuance. Each
27 Aggrieved Employee must cash/deposit his or her Individual PAGA Payment check within 180
28 calendar days after it is issued to him or her. If a check remains uncashed/undeposited after 180

1 calendar days from the date of issuance, or if a check is returned to the Settlement Administrator as
2 undeliverable during the one hundred eighty-day period, the Settlement Administrator shall take all
3 reasonable efforts to identify the Aggrieved Employee's correct address, including the performance
4 of a "skip-trace." If an updated address can be identified, the Settlement Administrator shall issue
5 another check to the Aggrieved Employee and mail it to the Aggrieved Employee at his or her
6 updated address. Any reissued check shall be negotiable for 180 calendar days from the date of
7 reissuance. If an updated address for the Aggrieved Employee cannot be identified, if a reissued
8 check is once again returned to the Settlement Administrator as undeliverable, or if the reissued
9 check remains uncashed/undeposited after 180 calendar days, the Settlement Administrator will keep
10 an accounting of such funds and shall give notice to the Parties of the total balance of uncashed
11 Individual PAGA Payments. An Aggrieved Employee who fails to negotiate or receive their
12 Individual PAGA Payment check despite the procedures described above shall nevertheless remain
13 bound by the Settlement and the releases contained herein.

14 14. The funds represented by Individual PAGA Payment checks remaining uncashed for more
15 than 180 days after issuance shall be voided and then shall be transmitted to the Controller of the
16 State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil
17 Procedure § 1500, et seq. in the names of those Aggrieved Employees who did not cash their checks
18 until such time they claim their property. After the expiration of the 180-calendar day check cashing
19 period, as outlined above, the Settlement Administrator shall begin the process of transferring the
20 funds in accordance with California Code of Civil Procedure §§ 1500-1582 and the timing
21 requirements set forth by the Office of the State Controller. The Parties agree that this disposition
22 results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net
23 Settlement Amount will be paid out to the LWDA and Aggrieved Employees, whether or not all
24 Aggrieved Employees cash their Individual PAGA Payment checks.

25 15. **Final Reports by Settlement Administrator to Superior Court.** Within 10 days after the
26 final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve
27 on the Parties and file with the Superior Court a declaration providing a final summary report on the
28 disbursements of all funds from the Settlement Account. Within 10 days after transmission of any

1 remaining unclaimed funds to the Controller of the State of California, the Settlement Administrator
2 will serve on the Parties and file with the Superior Court a declaration providing a final summary
3 report on the transmission of any remaining unclaimed funds to the Controller of the State of
4 California.

5 **IV. SETTLEMENT TERMS AND CONDITIONS**

6 1. **Aggrieved Employee Pay Periods.** Based on an audit of Defendant's time and payroll data
7 by Plaintiff's expert, Plaintiff believes there are 27 eligible Aggrieved Employees who allegedly
8 suffered meal period violations in a total of 394 pay periods.

9 2. **Individual PAGA Payment Shares.** Subject to the terms and conditions of this Settlement,
10 the Settlement Administrator will calculate the Individual PAGA Payment for each eligible
11 Aggrieved Employee within 14 days after Defendant provides the Settlement Administrator with the
12 Aggrieved Employees' Data. The Individual PAGA Payment for each eligible Aggrieved Employee
13 will be calculated as follows, understanding that the formulas below do not constitute an admission
14 by either Party and are intended only to provide a practical means to simplify and administer the
15 claims process:

16 a) **Number of Aggrieved Employees and Number of Pay Periods.** Plaintiff shall
17 provide the Settlement Administrator with the identity of each Aggrieved Employee and the total
18 number of pay periods each Aggrieved Employee allegedly suffered a meal period violation during
19 the PAGA Period.

20 b) **Calculation of the Pay Period Value.** Based on an audit of Defendant's time and
21 payroll data by Plaintiff's expert, Plaintiff calculated the Pay Period Value by taking the \$14,000 in
22 the 25% of PAGA Penalties allocated to the Aggrieved Employees and dividing by the total number
23 of pay periods the eligible Aggrieved Employees collectively allegedly suffered meal period
24 violations during the PAGA Period, i.e., 394 pay periods resulting in a Pay Period Value of \$35.53.

25 c) **Calculation of Individual PAGA Payment Share.** The Settlement Administrator
26 shall assign to each eligible Aggrieved Employee a share of the 25% of PAGA Penalties allocated
27 to the Aggrieved Employees which shall be equal to the Pay Period Value multiplied by the number
28 of pay periods the eligible Aggrieved Employee allegedly suffered a meal period violation during

1 the PAGA Period. Upon calculation of the Aggrieved Employee's share, the Settlement
2 Administrator shall furnish to PAGA Counsel and Defense Counsel a worksheet containing a list of
3 employee identification numbers for the eligible Aggrieved Employees along with their
4 corresponding number Pay Periods showing an alleged meal period violation, and the amount of the
5 Individual PAGA Payment.

6 **3. Taxes and Withholdings.** Each Individual PAGA Payment is intended to settle the
7 Aggrieved Employees' claims for civil penalties arising under PAGA. Accordingly, one hundred
8 percent (100%) of each Individual PAGA Payment shall represent civil penalties. The Individual
9 PAGA Payment shall be paid to the Aggrieved Employee in full without deductions or withholdings,
10 and the Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved Employee for that
11 amount. Each Aggrieved Employee shall be responsible for his/her own share of applicable income
12 tax withholdings and deductions for his or her Individual PAGA Payment.

13 **4. Total Payment Amount.** In no event will Defendant be required to pay more than the Gross
14 Settlement Amount for distribution to Plaintiff, PAGA Counsel, Aggrieved Employees, LWDA,
15 Settlement Administrator, or for any other costs or expenses not otherwise enumerated.

16 **5. Payments to Plaintiff and PAGA Counsel and Others.** Subject to the terms and conditions
17 of this Settlement, the Settlement Administrator will make the following payments out of the Gross
18 Settlement Amount as follows:

19 a) **To Plaintiff:** In addition to his Individual PAGA Payment, Plaintiff will apply to the
20 Superior Court for a PAGA Representative Payment in an amount not to exceed \$3,000.00.
21 Defendant will not oppose this PAGA Representative Payment. Within 14 days after Defendant's
22 deposit of the Gross Settlement Amount into the Settlement Account, the Settlement Administrator
23 will pay the PAGA Representative Payment approved by the Superior Court out of the Gross
24 Settlement Amount. Payroll tax withholding and deductions will not be taken from the PAGA
25 Representative Payment and an IRS Form 1099 will be issued to Plaintiff for this payment.

26 b) **To PAGA Counsel:** PAGA Counsel will apply to the Superior Court for the recovery
27 of attorney's fees and costs incurred in prosecuting the Action. PAGA Counsel will request
28 attorney's fees in an amount not to exceed 35.84% of the Gross Settlement Amount, or not more than

1 \$45,000.00. PAGA Counsel will also file a memorandum of costs and will seek the PAGA Counsel
2 Litigation Expenses Payment in an amount not to exceed \$16,569.93 as requested costs incurred in
3 the Action to be paid from the Gross Settlement Amount. Defendant will not oppose these requests.
4 The costs and fees provided under the Agreement and approved by the Court shall be the total costs
5 and attorneys' fees recoverable in the Action. PAGA Counsel shall not seek additional costs or fees
6 arising from the litigation of the Action. Within 14 days after Defendant's deposit of the Gross
7 Settlement Amount into the Settlement Account, the Settlement Administrator will pay the amounts
8 approved by the Superior Court out of the Gross Settlement Amount; however, the payment shall
9 not precede disbursement of Individual PAGA Payments. Withholdings and deductions will not be
10 taken from the PAGA Counsel Fees Payment or PAGA Counsel Litigation Expenses Payment and
11 one or more IRS Forms 1099 will be issued to PAGA Counsel for those payments.

12 c) **To the Settlement Administrator:** The Settlement Administrator will be paid from
13 the Gross Settlement Amount its fees and expenses as approved by the Superior Court, which shall
14 not exceed \$5,000.00.

15 **Distribution of the LWDA PAGA Payment and Individual PAGA Payments:** As part of the
16 Motion for Approval, Plaintiff will apply to the Superior Court to approve the distribution of the
17 LWDA PAGA Payment and Individual PAGA Payments. Defendant will support the approval at the

18 d) hearing on the Motion for Approval.

19 **6. Appointment of Settlement Administrator.** The Parties will ask the Superior Court to
20 appoint CPT Group, Inc., a qualified and experienced administrator based in California in or near
21 where the Action is filed, to serve as the Settlement Administrator, which, as a condition of
22 appointment, will agree to be bound by this Agreement with respect to the performance of its duties
23 and its compensation. The Settlement Administrator's duties will include (i) calculating Individual
24 PAGA Payments; (ii) preparing, printing, and mailing the Notice of PAGA Action Settlement to all
25 Aggrieved Employees; (iii) using reasonable measures to contact all Aggrieved Employees,
26 including conducting a National Change of Address search on all Aggrieved Employees before
27 mailing the Notice of PAGA Action Settlement to each Aggrieved Employee's address; (iv) re-
28 mailing the Notice of PAGA Action Settlement to the Aggrieved Employee's new address for those

1 Aggrieved Employees whose address had changed; (v) setting up a toll-free telephone number to
2 receive calls from Aggrieved Employees; (vi) issuing the checks to effectuate the payments due
3 under the Settlement; (vii) using reasonable measures to deliver issued checks to Aggrieved
4 Employees, including use of a “skip-trace” for undeliverable checks; and (viii) otherwise
5 administering the Settlement pursuant to this Agreement.

6 7. The Settlement Administrator will have the final authority to resolve all disputes concerning
7 the calculation of an Aggrieved Employee’s Individual PAGA Payment, subject to the terms set forth
8 in this Agreement. If any Individual PAGA Payment is unable to be cashed because the Aggrieved
9 Employee died, became incompetent, or is unavailable due to military service, the Settlement
10 Administrator may pay the Aggrieved Employee’s Individual PAGA Payment to the Aggrieved
11 Employee’s successor in interest or legal representative upon presentation of reasonable proof of
12 such occurrence and legal relationship.

13 **V. RELEASE OF CLAIMS**

14 1. **Release of Claims by the LWDA and State of California.** Upon Defendant’s payment into
15 the Settlement Account the Gross Settlement Amount, Plaintiff as the representative of the California
16 Labor and Workforce Development Agency, the LWDA, and the State of California, without the
17 need to manually sign a release document, in exchange for the consideration recited in this
18 Agreement, on behalf of himself or itself and on behalf of his/its current, former, and future heirs,
19 executors, administrators, attorneys, agents, and assigns, shall and does hereby fully and finally
20 release Defendant and Defendant’s parents, predecessors, successors, subsidiaries, affiliates,
21 partners, owners, assigns, franchisors, and trusts, and all of its employees, officers, agents, attorneys,
22 stockholders, fiduciaries, and other service providers including, but not limited to, O’Hagan Meyer,
23 Patrick Allen Ramsey, Anton Anich, and Brianna N. Warren, (collectively hereinafter the
24 “Releasees”), from any and all claims for the recovery for civil penalties, attorneys’ fees, and costs
25 permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have,
26 against Releasees, arising out of the violations alleged in the First Amended Complaint or the PAGA
27 Letter or that reasonably could have been alleged, whether known or unknown, based on the facts
28 and legal theories contained in the First Amended Complaint or the PAGA Letter, including failure

1 to provide meal periods; failure to provide rest periods; failure to pay overtime; failure to provide
2 accurate wage statements; failure to pay all final wages; failure to permit inspection of records;
3 unlawful business practices in violation of § 17200 of the California Business and Professions Code;
4 civil penalties for violation of Labor Code § 2698, et seq. (PAGA); personal liability under Labor
5 Code § 558.1; violations of Labor Code Sections 201, 202, 203, 226, 226.7, 510, 512, 558, 558.1,
6 1194, and 2698, *et seq.* (the “PAGA Released Claims”). Plaintiff as the representative of the
7 California Labor and Workforce Development Agency, the LWDA, and the State of California shall
8 release the Releasees from the PAGA Released Claims that arose during the PAGA Period. The
9 Parties intend that this Settlement Agreement may be used as an affirmative defense against
10 subsequent PAGA claims for claim preclusion, issue preclusion, or other effects if an aggrieved
11 employee makes a subsequent claim on behalf of the LWDA based on the same factual allegations
12 as the PAGA Released Claims that were at issue in this action on behalf of the LWDA. Aggrieved
13 Employees cannot opt out of or object to the PAGA Release.

14 2. The PAGA Released Claims described in Paragraph 1 of Section V expressly exclude all
15 claims made by Aggrieved Employees for individual wage claims, vested benefits, wrongful
16 termination, unemployment insurance, disability, social security, workers’ compensation, claims
17 while classified as exempt, and claims outside of the PAGA Period.

18 3. **No Effect on Other Benefits.** The payment of the Individual PAGA Payments will not result
19 in any additional employee benefit payments (such as 401(k), vacation, or bonus) and shall not have
20 any effect on the eligibility for, or calculation of, any employee benefit.

21 **VI. MISCELLANEOUS TERMS**

22 1. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful activity,
23 has failed to comply with the law in any respect, or has any liability to anyone under the claims
24 asserted in the Action. This Settlement is entered into solely to compromise highly disputed claims.
25 Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing
26 by Defendant, an admission by Plaintiff that any of his claims were non-meritorious, or any defense
27 asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant
28 were willing to settle the Action will have no bearing on, and will not be admissible in connection

1 with, any litigation (other than solely in connection with the Settlement).

2 2. Whether or not the Judgment becomes Final, neither the Settlement, any document,
3 statement, proceeding, or conduct related to the Settlement, nor any reports or accounting of those
4 matters, will be (i) construed as, offered, or admitted in evidence, or deemed to be evidence for any
5 purpose adverse to the Releasees, including, but not limited to, evidence of a presumption,
6 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
7 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of
8 the Releasees, or any other civil, criminal or administrative action or proceeding except for purposes
9 of effectuating this Settlement.

10 3. Notwithstanding Paragraph 2 of Section VI of this Settlement, any and all provisions of this
11 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
12 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

13 4. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties and their
14 counsel, this Settlement and its exhibits will constitute the entire agreement between the Parties
15 relating to the Settlement, and it will then be deemed that no oral representations, warranties,
16 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
17 other than the representations, warranties, covenants, and inducements expressly stated in this
18 Settlement and its exhibits.

19 5. **Attorney Authorization.** PAGA Counsel and Defense Counsel warrant and represent that
20 they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required
21 or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to
22 execute any other documents required to effectuate the terms of this Settlement. The Parties and their
23 counsel will cooperate with each other and use their best efforts to affect the implementation of the
24 Settlement. In the event the Parties are unable to reach an agreement on the form or content of any
25 document needed to implement the Settlement, or on any supplemental provisions that may become
26 necessary to effectuate the terms of this Settlement, the Parties will seek the assistance of the Superior
27 Court, and in all cases, all such documents, supplemental provisions and assistance of the court will
28 be consistent with this Settlement.

1 **6. Modification of Agreement.** This Agreement, and any and all parts of it, may be amended,
2 modified, changed, or waived only by an express written instrument signed by all Parties, their
3 successors-in-interest, and/or the Parties' respective counsel, as authorized.

4 **7. Settlement Binding on Successors.** This Settlement will be binding upon, and inure to the
5 benefit of, the successors of each of the Parties.

6 **8. Applicable Law.** All terms and conditions of this Settlement and its exhibits will be governed
7 by and interpreted according to the laws of the State of California, without giving effect to any
8 conflict of law principles or choice of law principles.

9 **9. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this
10 Settlement. This Settlement will not be construed against any Party on the basis that the Party was
11 the drafter or participated in the drafting.

12 **10. Fair Settlement.** The Parties and their respective counsel believe and warrant that this
13 Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this
14 Settlement through arms-length negotiations, taking into account all relevant factors, current and
15 potential.

16 **11. Headings.** The descriptive heading of any section or paragraph of this Settlement is inserted
17 for convenience of reference only and does not constitute a part of this Settlement.

18 **12. Notice.** All notices, demands, or other communications given under this Settlement will be
19 in writing and deemed to have been duly given as of the third business day after mailing by U.S.
20 Mail, addressed as follows:

21 *To PAGA Counsel:*

Rudy Ginez, Jr., Esq.
RUDOLFO GINEZ LAW OFFICE
926 North Flower Street
Santa Ana, CA 92703

24 *To Defense Counsel:*

Clint D. Robison, Esq.
Michael I. Kessler, Esq.
O'HAGAN MEYER
21650 Oxnard Street, Suite 530
Woodland Hills, CA 91367

27 ///

28 ///

1 13. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts.
2 All executed counterparts and each of them will be deemed to be one and the same instrument
3 provided that counsel for the Parties will exchange between themselves the original signed
4 counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be
5 presumptive evidence of the execution of the original, which shall be produced on reasonable request.
6 Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

7 **JOSE LUIS OLIVEROS**

8
9 Date: 9/13/2023

Jose L. Oliveros

10 **SHARK ISLAND YACHT CLUB D.B.A**
11 **NEWPORT BEACH YACHT CLUB**

12 Date: 9/15/2023

Charles Sharp

14 By: Charles Sharp

15 Its: Vice Commodore - Treasurer

16 APPROVED AS TO FORM AND CONTENT:

17 **RUDOLFO GINEZ LAW OFFICE**

18
19 Date: 9/13/2023

20 By: Rudy Ginez
21 RUDY GINEZ, JR.
22 Attorneys for Plaintiff,
23 JOSE LUIS OLIVEROS

24 **O'HAGAN MEYER**

25 Date: 9/18/2023

26 By: Clint D. Robison
27 CLINT D. ROBISON
28 MICHAEL I. KESSLER
Attorneys for Defendants, SHARK ISLAND
YACHT CLUB dba NEWPORT BEACH
YACHT CLUB, PATRICK ALLAN
RAMSEY, ANTON ANICH and BRIANA N.
WARREN