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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

MARTIN WEAVER,	) Case No. S-CV-0047815
	)
Plaintiff,	) PLAINTIFF'S NOTICE OF MOTION
vs.	) AND MOTION TO APPROVE PAGA
	) SETTLEMENT; MEMORANDUM OF
OMKAR ROCKLIN, INC. dba ROCKLIN	) POINTS AND AUTHORITIES; AND
PARK HOTEL, a California Corporation;	) DECLARATION OF MATTHEW R.
BHAVIN MEHTA, and Individual; HEMANG	) SCHOECH IN SUPPORT THEREOF
TRIVEDI, an Individual; RAVINDRAM	)
RAMOJI, an Individual; and DOES 1-100,	) Date: July 18, 2023
Inclusive,	) Time: 8:30 a.m.
	) Dept.: 31
Defendants.	)
	)

PLEASE TAKE NOTICE that on July 18, 2023, in Department 31 of the Placer County Superior Court located at 10820 Justice Center Drive, Roseville, California, Plaintiff, Martin Weaver ("Plaintiff"), individually and on behalf of all others similarly situated, will move this

1 Court for an order approving the settlement of this action pursuant to the California Private
2 Attorneys General Act (“PAGA”), and in support thereof, state as follows: (a) the Parties have
3 reached a Settlement Agreement (“Agreement”) to resolve all claims asserted in this action under
4 PAGA; (b) the Agreement provides for a settlement payment of \$20,000 to be distributed among
5 the participating Class Members, as defined in the Agreement; (c) the proposed settlement
6 amount reflects a fair, reasonable, and adequate resolution of the PAGA claims in light of the
7 risks and costs of continued litigation; (d) the Agreement was negotiated at arm’s length, in good
8 faith, and with the assistance of experienced counsel for both sides; and (d) the settlement is
9 consistent with the purposes and policies of PAGA and the public interest, and the proposed
10 allocation of settlement funds among the Class Members is fair and reasonable.
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12
13 THEREFORE, Plaintiff respectfully requests that this Court grant final approval of the
14 PAGA settlement, as set forth in the Agreement, and enter such other and further relief as the
15 Court deems just and proper.

16 This motion is based on this notice, the accompanying Memorandum of Points and
17 Authorities and Declaration of Matthew R. Schoech, the PAGA Settlement Agreement, and the
18 complete files and records in this action. Because all parties have agreed to the proposed PAGA
19 settlement, this motion is not opposed by Defendants.
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21 “Pursuant to Local Rule 20.2.3, the court will issue a tentative ruling for this matter on
22 the court day before the hearing. The tentative ruling will be available after 12:00 noon as an
23 audio recording accessible at (916) 408-6480; the tentative ruling will also be available at the
24 court’s website, www.placer.courts.ca.gov. The tentative ruling shall become the final ruling on
25 the matter and no hearing will be held unless oral argument is timely requested or the tentative
26 ruling indicates otherwise. Requests for oral argument must be made by calling (916) 408-6481
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no later than 4:00 p.m. on the court day prior to the hearing.”

Dated: 6/23/23

SCHOECH LAW GROUP, PC



Matthew R. Schoech
Attorneys for Plaintiff

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff, Martin Weaver, individually and on behalf of all others similarly situated, respectfully moves this Court for an order approving the settlement of this action pursuant to the California Private Attorneys General Act (“PAGA”), and submits this memorandum of points and authorities in support thereof.

II. BACKGROUND FACTS

In late March 2021 Plaintiff, Martin Weaver, was in dire need of a place to stay and stumbled upon Rocklin Park Hotel which was owned and operated by Defendant, Omkar Rocklin, Inc. (“Defendant”). It was affordable and he intended to stay for a few days while working out other living arrangements. The day after checking into the hotel Plaintiff was approached by Defendant and asked to assist with moving furniture and refurnishing the rooms and that Plaintiff could receive compensation by way of room credits. Plaintiff thereafter agreed to work for Defendant at that time. See Complaint, ¶¶ 5-6, attached as **Exhibit 1** to Plaintiff’s Request for Judicial Notice in Support of Motion to Approve PAGA Settlement (“RFJN”) filed concurrently herewith.

Plaintiff’s role quickly expanded the hotel manager would routinely be absent and began having Plaintiff work at the front desk to monitor the phones throughout the night and training

1 him to take reservations and check guests into the hotel. See Complaint, ¶ 7, attached as **Exhibit**
2 **1** to RFJN.

3 Plaintiff was also given tasks throughout the day that ranged from moving furniture,
4 hanging pictures and mirrors, assembling headboards, and working the front desk, amongst other
5 things. Plaintiff would verbally inform the manager about the number of hours he would work
6 on a given day and purportedly he was given a “room credit”. Plaintiff initially had his own
7 room until the end of May 2021 when he ran out of funds and the “room credits” were not
8 sufficient to cover the amounts he was being charged for the room. Plaintiff then began sharing
9 a room in order to minimize his expenses. See Complaint, ¶¶ 8-9, attached as **Exhibit 1** to RFJN.
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11 Plaintiff was working seven (7) days a week and averaging 40 hours per week. Then on
12 weeks that the furniture trucks would arrive Plaintiff was working on average 60 hours per week
13 during those times. Additionally, at the end of July 2021, Plaintiff was sent to another one of
14 Defendant’s hotels in Manteca, California, for two days in order to board up windows at the
15 property. Plaintiff was required to drive his own vehicle and he worked approximately 13 hours
16 on the first day and 21 hours on the second day as he returned from Manteca around 9:00 p.m.
17 only to be ordered to unload furniture at the Rocklin Park Hotel until 4:00 a.m. the following
18 day. See Complaint, ¶¶ 10-11, attached as **Exhibit 1** to RFJN
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20 Plaintiff was exhausted after working for almost 24 hours straight and asked for a room
21 for the night. He received some resistance then was given a room that was unsanitary with soiled
22 sheets. This was the last straw for Plaintiff and he vacated the property within days and ceased
23 working for Defendants. See Complaint, ¶ 12, attached as **Exhibit 1** to RFJN
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25 Plaintiff did not receive any documentation regarding the number of hours he worked nor
26 was he ever paid wages for his work and did not receive pay stubs. He was also denied meal and
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1 rest breaks and not reimbursed for his automobile expenses when forced to drive his personal
2 vehicle to Manteca. See Complaint, ¶ 12, attached as **Exhibit 1** to RFJN

3 Plaintiff alleges that Defendants' acts and omissions, as described herein, violated
4 provisions of the California Labor Code, including sections 201, 202, 204, 210, 226, 226.7,
5 226.8, 246, 248.5, 432.5, 510, 512, 1197, 1198.5 and 2802; violate the applicable Wage Orders
6 issued by the California Industrial Welfare Commission, including Wage Order 9-2001; and
7 amount to unfair and unlawful business practices prohibited by the California Business and
8 Professions Code, sections 17200 et seq.

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10 On January 6, 2022, Plaintiff filed the instant action on behalf of himself and other
11 aggrieved employees alleging a cause of action pursuant to the Private Attorneys General Act of
12 2004, Cal. Labor Code § 2698 et seq. ("PAGA"), along with causes of action, based on alleged
13 violations of Labor Code §§ 1194, 1194.2, 1197, 204, 210, 510, 1198, 226.7, 512, 2802, 226,
14 226(b), and 1198.5. See Declaration of Matthew R. Schoech in Support of Motion to Approve
15 PAGA Settlement ("Schoech Decl.") at ¶ 3.

16
17 Through this litigation, the Parties have engaged in formal and informal discovery. It
18 was discovered that Defendants employed 61 individuals and that only Plaintiff and one other
19 individual worked in exchange for room credits. Based on Defendants timekeeping records it
20 was discovered that there were only 55 employees who were affected and that there were lesser
21 violations of labor laws which include overtime rates which were not applied correctly when an
22 employee would work the graveyard shift which carried into the following workday and some
23 missed meal breaks, and the derivative claim for inaccurate pay stubs. Otherwise, Defendant's
24 employees were in compliance with labor laws. See Schoech Decl. at ¶ 4.

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26 It was after the discovery and analysis of the claims that the Parties entered into a
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Settlement Agreement (“Agreement”) to resolve all claims asserted in this action under PAGA and the individual claims asserted by Plaintiff. A true and correct copy of the Agreement is attached as **Exhibit A** to the Schoech Decl.

Plaintiff was also able to settle his individual claims asserted against Defendant for \$10,000. Plaintiff’s individual claims were unique in the sense that he was a resident at the hotel owned by Defendants and was hired to perform tasks around the hotel. Plaintiff was not paid wages. Instead, Plaintiff was given room credits in violation of California law. Plaintiff was also not provided his legally mandated meal and rest breaks, reimbursed for expenses, or paid overtime while, except for a few exceptions, labor laws were followed for the balance of Defendant’s 61 employees. See Schoech Decl. at ¶ 6.

III. THE SETTLEMENT AGREEMENT

The Agreement provides for a gross settlement payment of \$20,000 by Defendant to settle the PAGA claims which are to be distributed as follows: claims administration not to exceed \$2,950; Attorneys fees not to exceed \$6,666.67; litigation costs not to exceed \$2,750; an incentive award to Plaintiff not to exceed \$400; 75% of the net settlement after the above fees and costs to the LWDA; and 25% of the net settlement after the above fees and costs to aggrieved employees on a pro-rata basis.

The Parties have agreed to the appointment of ILYM Group, Inc. (“ILYM”), to act as the Settlement Administrator. ILYM has accepted this assignment and agreed to perform the Settlement Administrator duties for an amount not to exceed \$2,950. See Schoech Decl., ¶ 7.

For any settlement checks that are uncashed after 180, the funds will be remitted to the California State Controller for deposit into the Unclaimed Property Fund pursuant to Code of Civil Procedure section 384.

1 The proposed settlement amount reflects a fair, reasonable, and adequate resolution of the
2 PAGA claims in light of the risks and costs of continued litigation and the Agreement was
3 negotiated at arm's length, in good faith, and with the assistance of experienced counsel for both
4 sides.

5 The settlement is consistent with the purposes and policies of PAGA and the public
6 interest, and the proposed allocation of settlement funds among the Class Members is fair and
7 reasonable.
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9 IV. ARGUMENT

10 A. LEGAL STANDARD

11 Labor Code § 2699(1)(2) states that “the superior court shall review and approve any
12 settlement of any civil action filed pursuant to this part.” Unfortunately, PAGA does not specify
13 a standard of review for PAGA settlements, and there is no published appellate authority on the
14 subject. However, there are analogous statutory schemes. A PAGA case is in the nature of a
15 *qui tam* proceeding. *Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal.4th 348, 394.
16 California has at least two other statutory schemes whereby an individual may sue on behalf of
17 the State or in the public interest: The California False Claims Act and Proposition 65. Under
18 both schemes, a court must approve a settlement or dismissal of the action.
19

20 Under the California False Claims Act, a *qui tam* plaintiff may only dismiss the case with
21 a court's (and the government's) consent. Gov't Code § 12652(c)(1). In deciding whether to give
22 consent, a court must take into account “the best interests of the parties involved and the public
23 purposes behind the act.” *Id.* Moreover, if a *qui tam* plaintiff objects to a settlement between the
24 government and a defendant, the court can only approve the settlement after finding it is “fair,
25 adequate, and reasonable under all the circumstances.” Gov't Code § 12652(e)(2)(B). Similarly,
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1 Proposition 65 actions, like PAGA actions, are brought by private plaintiffs to safeguard public
2 rights. *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
3 Cal.App.4th 46, 63. In addition to complying with specified statutory criteria, Prop 65
4 settlements may only be approved if: (1) they are “just” and (2) they “serve the public interest.”
5 *Id.* at 61-62. In making this determination, the *Kintetsu* court described the appropriate inquiry as
6 similar to the “fair, reasonable, and adequate” test used in class actions. *Id.* at 61. The *Kintetsu*
7 court also stated that, in determining whether to approve a Prop 65 settlement, a court should
8 consider the policies underlying the statute. *Id.* at 63

11 **B. THE PURPOSE OF PAGA**

12 PAGA was passed because the Legislature believed it necessary “to achieve maximum
13 compliance with state labor laws” and “to ensure an effective disincentive for employers to
14 engage in unlawful and anticompetitive business practices.” 2003 Cal. Legis. Serv. Ch. 906 §
15 1(a). The Legislature further found that, while self-policing efforts have had some success, “in
16 other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and
17 collection of civil penalties as provided in the Labor Code.” *Id.* at § 1(b). Through PAGA, the
18 Legislature thus: (1) sought to “enlist[] willing citizens in the task of private enforcement,”
19 *Iskanian, supra*, 59 Cal.4th at 390; (2) “deputized” aggrieved employees to sue on behalf of the
20 State to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys’
21 fees, and costs. 2003 Cal. Legis. Serv. Ch. 906 (Legislative Counsel’s Digest). In bringing a
22 PAGA action, “[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement
23 agencies, representing the same legal right and interest as those agencies” *Iskanian, supra*,
24 59 Cal.4th at 394.

25 As for the interests of the LWDA (in whose shoes Plaintiffs stand), its top enforcement
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1 priorities are “to vigorously enforce minimum labor standards in order to ensure employers are
2 not required or permitted to work under substandard unlawful conditions . . .” and to “protect
3 employers who comply with the law from those who attempt to gain a competitive advantage at
4 the expense of their workers by failing to comply with minimum labor standards.” Labor Code
5 §90.5(a). Further, under PAGA, civil penalties are primarily intended as a deterrent, and not as a
6 financing mechanism for the LWDA and the State’s general fund. While the State clearly has an
7 interest “in receiving the proceeds of civil penalties,” the penalties are “used to deter violations.”
8 *Iskanian, supra*, 59 Cal.4th at 313
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10 **C. THE SETTLEMENT SHOULD BE APPROVED**

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12 Defendant has agreed to pay \$20,000 to settle the labor code violations that were
13 experienced by its 61 employees over the statutory period. Accordingly, the proposed settlement
14 reasonably advances PAGA’s purpose by achieving compliance with Labor Codes and deterring
15 similar violaitons. Plaintiffs also believe the proposed settlement acts to encourage private
16 enforcement of PAGA. Through the settlement, Plaintiffs may receive a modest incentive
17 payment, Plaintiffs’ counsel will receive attorneys’ fees and costs as determined by the Court,
18 and all aggrieved employees will receive a 25% share of the net settlement amount, as well as
19 notice of the claim.
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22 Finally, the proposed settlement is both just and in the public’s interest. PAGA awards
23 penalties of “one hundred dollars (\$100) for each aggrieved employee per pay period for the
24 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
25 each subsequent violation.” Labor Code § 2699(f)(2). At least one appellate court holds, in the
26 context of other Labor Code violations, that the “subsequent” violation penalty rate for a Labor
27 Code violation does not apply until an employer is notified that its conduct violates the law.
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1 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207-09. So, if the *Amaral* court's
2 holding is applied here the potential maximum statutory penalties which would be available in
3 this matter are \$105,000 based on Plaintiffs' expert's analysis of the payroll and timekeeping
4 data produced by Defendant in this action. If the Court approves the PAGA settlement, the
5 LWDA and aggrieved employees would be receiveing 19.04% of the maximum statutory
6 penalties, a just and reasonable recovery under the circumstances.
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8 The proposed settlement, even with deductions, provides a payment of \$5,425 to the
9 LWDA which is substantial considering the limited labor code violations with the 61 aggrieved
10 employees covered by the settlement. The settlement also provides a small sum to each
11 employee (an average of \$29.64 per employee) on a pro-rata basis. However, the purpose of
12 PAGA is not to compensate employees, who retain any private right of action they may have
13 under the applicable Labor Code provisions. In that respect, the settlement also requires that each
14 employee receive a notice that describes this litigation and the settlement sum. Plaintiffs contend
15 this notice will educate aggrieved employees as to the requirements of the Labor Code,
16 something that is in the public interest and consistent with PAGA's purpose. See Labor Code §
17 2699(j) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for
18 [among other things] "education of employers and employees about their rights and
19 responsibilities under this code.")
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23 Finally, public policy strongly favors the settlement of litigation. *Kintetsu, supra*, 141
24 Cal.App.4th at 63. Because the proposed settlement is neither unjust nor ignores the public
25 interest, it should be approved. *Id.*
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V. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court approve the PAGA settlement, as set forth in the Agreement, and enter such other and further relief as the Court deems just and proper.

Dated: 6/23/23

Respectfully submitted,
SCHOECH LAW GROUP, PC



Matthew R. Schoech
Attorney for Plaintiff

DECLARATION OF MATTHEW R. SCHOECH IN SUPPORT OF MOTION

I, Matthew R. Schoech, declare as follows:

1. I am the managing attorney of Schoech Law Group, PC, attorneys of record for Plaintiff in this action. I am admitted to practice before all courts of the State of California. I am Plaintiff's counsel in the above-captioned class action and have personal knowledge of the facts thereto. I make this declaration upon my personal knowledge and, if called upon and sworn as a witness, I could and would competently testify hereto.

2. I submit this Declaration in support of Plaintiffs' unopposed Motion for Approval of PAGA Settlement served and filed herewith. I have been involved in all aspects of this Action and have personal knowledge of the following facts. My firm has served lead counsel for Plaintiff during the course of this litigation. I have extensive experience litigating complex civil actions including multi-party litigation, wage and hour claims, labor code violations, wage and hour class actions, PAGA claims, and construction defect claims. I have litigated and resolved over 200 complex civil actions and have litigated multiple class action and PAGA cases. I am

1 experienced in litigation, settlement, and certification, of class action cases and PAGA cases. I
2 have exclusively been practicing civil litigation for over 18 years.

3 3. On January 6, 2022, my office filed the the Complaint on behalf of Plaintiff
4 alleging a cause of action pursuant to the Private Attorneys General Act of 2004, Cal. Labor
5 Code § 2698 et seq. (“PAGA”), along with causes of action, based on alleged violations of Labor
6 Code §§ 1194, 1194.2, 1197, 204, 210, 510, 1198, 226.7, 512, 2802, 226, 226(b), and 1198.5.
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8 4. I have been involed in every aspect of this litigation. Through this litigation, the
9 Parties have engaged in formal and informal discovery. It was discovered that Defendants
10 employed 61 individuals and that only Plaintiff and one other individual worked in exchange for
11 room credits. Based on Defendants timekeeping records it was discovered that there were only
12 55 employees who were affected and that there were lesser violations of labor laws which
13 include overtime rates which were not applied correctly when an employee would work the
14 graveyard shift which carried into the following workday and some missed meal breaks, and the
15 derivative claim for inaccurate pay stubs. Out of the 3,410 shifts that were greater than five (5)
16 hours, there were 2,545 shifts with no meal; and, 213 shifts with a meal, but it was less than
17 thirty (30) minutes; and, 388 shifts that were greater than five (5) hours but the meal did not
18 appear within the first five hours of the shift, making it late; and, 176 shifts that were greater than
19 ten (10) hours with no second (2nd) meal period. After de-duplication, there were 2,999 shifts
20 that were greater than five (5) hours that contained a meal that was either (a) late; or, (b) short;
21 or, (c) missing; or, (d) over ten (10) hours with no second meal. This affected fifty-five (55)
22 employees, who received a total of 525 paychecks that had one or more shifts greater than five
23 (5) hours that contained a meal that was either (a) late; or, (b) short; or, (c) missing; or, (d) over
24 ten (10) hours with no second meal. Assuming Otherwise, Defendant’s employees were in
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compliance with labor laws.

5. Utilizing the payroll and timekeeping records that were produced by Defendants, Plaintiff and Plaintiff's expert analyzed the potential labor code violations and maximum PAGA penalties. With this in mind the Parties were able to reach a settlement of the PAGA claims for \$20,000 which we believe is fair and reasonable. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**.

6. Plaintiff was also able to settle his individual claims asserted against Defendant for \$10,000. Plaintiff's individual claims were unique in the sense that he was a resident at the hotel owned by Defendants and was hired to perform tasks around the hotel. Plaintiff was not paid wages. Instead, Plaintiff was given room credits in violation of California law. Plaintiff was also not provided his legally mandated meal and rest breaks, reimbursed for expenses, or paid overtime while, except for a few exceptions, labor laws were followed for the balance of Defendant's 61 employees.

7. The Parties have agreed to the appointment of ILYM Group, Inc. ("ILYM"), to act as the Settlement Administrator. ILYM has accepted this assignment and agreed to perform the Settlement Administrator duties for an amount not to exceed \$2,950.

8. On October 15, 2021, Plaintiffs submitted a PAGA letter to the California LWDA in regard to this action. The PAGA cause of action was based on Defendant's alleged Labor Code violations. Based on Defendant's payroll and timekeeping data, in working with an expert retained by Plaintiff to analyze the payroll and timekeeping records, we calculated the maximum potential PAGA penalties to be in the order of \$105,000 for the missed meal breaks, unpaid overtime, and inaccurate pay stubs. PAGA penalties are discretionary and, based on my experience, \$20,000 for PAGA penalties is clearly reasonable considering Defendant's records

1 which demonstrates that they were mostly compliant with labor codes in relation to their 55
2 potentially affected employees and the numerous obstacles present in bringing a PAGA action to
3 trial and beyond to obtain discretionary penalties. If the Court approves this settlement we will
4 be recoving 19.04% of the maximum potential penalties available for the aggrieved employees
5 and LWDA.
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7 9. On June 23, 2023, the LWDA was notified of this motion and the proposed
8 settlement of the PAGA claim by submitting a copy of this motion via the online submission
9 process on the LWDA website.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct, and that this declaration was executed on June 23, 2023, at
12 Sacramento, California.
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15 Matthew R. Schoech, Esq.
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Exhibit A

Exhibit A

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

Martin Weaver v. Omkar Rocklin, Inc. DBA Rocklin Park Hotel, Et al.
Placer County Superior Court
Case Number S-CV-0047815

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action with respect to all claims brought in a representative capacity pursuant to the Private Attorneys General Act ("PAGA") (Labor Code § 2698 *et seq.*) shall be effectuated upon and subject to the following terms and conditions.

This Agreement is made by and between Defendant Omkar Rocklin, Inc. ("Omkar" or "Defendant"), Plaintiff Martin Weaver ("Plaintiff"), for himself, Aggrieved Employees (defined below), on behalf of the State of California, (Defendant, Plaintiff and Aggrieved Employees, as defined herein, are referred to collectively referred to as the "Parties.") This Agreement shall be operative upon the last date upon which it is signed by the Parties but will not become effective until it is approved by the Court.

The Parties agree that all representative claims brought or that could have been brought pursuant to PAGA in Placer County Superior Court Case Number S-CV-0047815 (the "Litigation" or "Action") shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendants to pay the sum of *Twenty Thousand Dollars and Zero Cents* (\$20,000.00) (hereinafter referred to as the "PAGA Settlement Sum") for settlement of the PAGA claims and penalties sought in the Litigation. Each party shall bear their own attorneys' fees and costs in connection with the settlement of the settlement of PAGA. The Parties further agree that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

Article I.

Definitions.

Section 1.01 Definitions.

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

- (a) "Aggrieved Employees" means all individuals who worked at the Rocklin Park Hotel at 5450 China Garden Road, Rocklin, California from November 11, 2020 through the Effective Date of this Agreement. Defendant represents that the total number of Aggrieved Employees is approximately 61 individuals.
- (b) "Court" means the Superior Court for the State of California, County of Placer.
- (c) "Defense Counsel" or "Counsel for Defendant" is:

Sharon Ongerth Rossi, Esq.
Ruby Zapien, Esq.
ROGERS JOSEPH O'DONNELL
311 California Street, 10th Floor
San Francisco, CA 94104

(d) "Effective Date" means the date the Court approves the settlement of the PAGA penalties as described in this Agreement and dismisses the Action with prejudice.

(e) "Plaintiff's Counsel" is:

Matthew R. Schoech
Schoech Law Group, PC
3511 Del Paso Rd., Ste. 160 PMB 227
Sacramento, CA 95835
Tel: (916) 569-1940
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Email: megan@vdlitigation.com

(f) "Release Period" means the time period January 6, 2021, through date of Order approving this settlement.

(g) "Settlement Administration Costs" means all costs incurred by the Claims Administrator in administration of this Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Plaintiffs' attorneys' fees and costs, to Plaintiffs for his Incentive Award, and to the LWDA.

(h) "Settlement Administrator" means ILYM Group, Inc., which the Parties have agreed will be responsible for the administration of the Settlement as described above.

Article II.

Background.

Section 2.01 Background.

- (a) On January 6, 2022, Plaintiff filed a complaint in the Superior Court of the State of California for the County of Placer, *entitled Martin Weaver v. Omkar Rocklin, Inc. dba Rocklin Park Hotel, et al.*, Case No. S-CV-0047815. The Litigation was brought by Martin Weaver, on behalf of himself alleging a cause of action pursuant to the Private Attorneys General Act of 2004, Cal. Labor Code § 2698 *et seq.* ("PAGA"), along with causes of action, based on alleged violations of Labor Code §§ 1194, 1194.2, 1197, 204, 210, 510, 1198, 226.7, 512, 2802, 226, 226(b), and 1198.5. This Agreement does not address the non-PAGA claims asserted in the Litigation by Weaver as such claims are the subject of a separate settlement agreement and release.
- (b) Through this litigation, the Parties have engaged in formal and informal discovery. The Parties reached this PAGA Settlement only after such discovery and investigation was performed.
- (c) This PAGA Settlement contemplates the entry of an order by the Court approving the payment allocated for settlement of the PAGA claims and dismissing the PAGA cause of action with prejudice.
- (d) The Parties are executing a separate settlement agreement to address the non-PAGA causes of action alleged in the Litigation.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through either a stipulation or an unopposed motion for an Order from the Court approving the PAGA settlement as described in this Agreement at the earliest possible date. Concurrently with the submission of this Agreement to the Court, Plaintiff shall submit it to the LWDA as required by PAGA. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the payment of the PAGA Settlement Sum as described in this Agreement.

The Court's approval of the PAGA Settlement as described in this Agreement shall be embodied in a written Order, which shall be transmitted to the LWDA promptly upon entry, as required by PAGA. Should the Court not grant approval of the payment of the PAGA Settlement Sum as described in this Agreement or decline to dismiss the Action, this Agreement shall be null and void and have no further effect.

Section 3.02 Settlement Payment Procedures.

(a) Payment of PAGA Settlement Sum and Notice to Aggrieved Employees.

- (1) Defendants agrees to pay a total amount of Twenty Thousand Dollars (\$20,000.00) to settle this matter ("PAGA Settlement Sum"). This amount, *i.e.*, the PAGA Settlement Sum, shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, and to Settlement Administrator to administer the settlement, in settlement of all claims asserted in the Action, or that could have been asserted in the Action, by Plaintiff, on behalf of himself and the Aggrieved Employees under the PAGA. The Parties agree that there are no circumstances that would require Defendants to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement. In the event that this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants shall have no obligation to pay any of the PAGA Settlement Sum and the Parties' respective positions shall be restored to positions prior to entry into this Agreement. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.
- (2) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum the cost of claims administration, which shall not exceed \$2,950 and Plaintiff's attorneys' fees which shall not exceed \$6,666.67, litigation cost not to exceed \$2,750, and \$400 to Plaintiff for his service as the PAGA representative. Accordingly, the net settlement fund shall amount to at least \$7,233.33. Pursuant to PAGA, 75 percent of this Net Settlement shall be distributed to the LWDA with the remaining 25% distributed to Aggrieved Employees based on the calculation described in the Paragraph below.
- (3) Individual Payment to Aggrieved Employees will be calculated by counting the total number of work weeks worked by Aggrieved Employees during the Release Period, rounded up to the nearest whole number as determined by Omkar's records and dividing the Net Settlement Fund to get a Work Week Value. Each Aggrieved Employee's Payment will be calculated by multiplying the total number of work weeks he or she worked during the Release Period by the Work Week Value,
- (4) No later than fifteen (15) calendar days after the Effective Date, Defendants shall wire to the Settlement Administrator the total PAGA Settlement Sum.

- (5) No later than twenty-five (25) calendar days after the Effective Date, the Settlement Administrator shall transmit the Notice of PAGA Settlement (attached hereto as **Exhibit A**), together with settlement checks containing their individual settlement amounts, with no claims process required, to all Aggrieved Employees by First-Class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices.
- (6) For each settlement check and Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. The value of checks uncashed more than 180 days after issuance shall be remitted pursuant to Code of Civil Procedure § 384 to the California State Controller for deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed.
- (7) No later than twenty-five (25) calendar days after the Effective Date, the Settlement Administrator shall transmit to the LWDA its share of PAGA penalties; and to Plaintiff Weaver his PAGA payment.
- (8) 100% of the PAGA Settlement Amount is considered settlement of penalties and will not be subject to local, state or federal tax withholdings. All recipients of payments under this PAGA Settlement shall have their payments reported on an IRS Form 1099. The Settlement Administrator shall issue IRS Form 1099s (if required) to the Aggrieved Employees.

Article IV.

Limitations On Use of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. Defendant further denies that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation

or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendant, on behalf of itself and Released Parties, specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employees.

Section 4.03 Confidentiality and Counsel Representation.

Plaintiff and his counsel shall keep all terms of this Settlement confidential until the motion or stipulation for approval is filed with the Court, after which time Plaintiff shall refer any questions or comments about the Settlement from Aggrieved Employees to his counsel. Plaintiff and his counsel shall not publicize, advertise, or otherwise make mention of this Settlement through any means other than Court filings surrounding the settlement approval process and in response to Aggrieved Employee inquiries. Plaintiff and his counsel shall not post information about this Settlement or the Action on any websites or any type of social media.

Section 4.04 Nullification.

Invalidation of any material provision of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Limited Release by Plaintiff and Aggrieved Employees.

Upon the Effective Date and subject to Omkar's full payment of all sums required by this Settlement, Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, and the State of California, fully releases and discharges Bhavin Mehta, Hemang Trivedi, Ravindram Ramoji, and Omkar, and all of Omkar's parents, subsidiaries, affiliates, predecessors, successors, assigns, past or present shareholders, members, officials, owners, officers, directors, attorneys, agents, insurers, representatives, current and former employees, heirs and assigns of each of them, and any other person, firm, or entity now, previously, or hereafter affiliated in any manner with Omkar (collectively, "the Released Parties"), from any and all claims, rights, demands, liabilities, and causes of action of every nature and description,

under PAGA, which were asserted in the Action or which could have been asserted in the Action that accrued during the Release Period.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments.

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

Section 6.03 Assignment.

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

Section 6.04 Governing Law.

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

Section 6.05 Entire Agreement.

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

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

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

Section 6.08 Attorneys' Fees and Costs.

With respect to this Agreement, the Parties shall bear their own attorney's fees and costs. If any party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

Section 6.09 Dispute(s).

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

Section 6.10 Binding.

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

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

APPROVED AND ACCEPTED.

[SIGNATURES ON FOLLOWING PAGE]

Dated: March __, 2023

OMKAR ROCKLIN, INC.

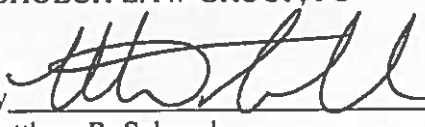
By _____
Bhavin Mehta
President

Dated: March ³¹²⁹³¹ __, 2023

By  _____
Martin Weaver (Apr 1, 2023 07:47 PDT)
MARTIN WEAVER

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: March 29, 2023

SCHOECH LAW GROUP, PC
By  _____
Matthew R. Schoech
Attorneys for Plaintiff

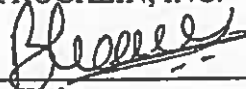
Dated: March __, 2023

ROGERS JOSEPH O'DONNELL

By _____
Sharon Ongerth Rossi.
Attorneys for Defendant

Dated: March __, 2023

OMKAR ROCKLIN, INC.

By 
Bhavin Mehta
President

Dated: March __, 2023

By _____
MARTIN WEAVER

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: March __, 2023

SCHOECH LAW GROUP, PC

By _____
Matthew R. Schoech
Attorneys for Plaintiff

April

Dated: ~~March~~ 17, 2023

ROGERS JOSEPH O'DONNELL

By 
Sharon Ongerth Rossi.
Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER**

MARTIN WEAVER,

Plaintiff,

vs.

OMKAR ROCKLIN, INC. dba
ROCKLIN
PARK HOTEL, a California Corporation;
BHAVIN MEHTA, an Individual;
HEMANG TRIVEDI, an Individual;
RAVINDRAN RAMOJI, an Individual;
and DOES 1-100, Inclusive,

Defendants.

Case No. S-CV-0047815

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 *ET SEQ.*)**

Complaint Filed: January 6, 2022

You have been identified as an individual who worked for Omkar Inc. ("Defendant") at the Rocklin Park Hotel, 5450 China Garden Road, Rocklin, California from January 6, 2021 through {date of Court order} ("Aggrieved Employee").

On January 6, 2023, Martin Weaver (the "Plaintiff") commenced a lawsuit in Placer Superior Court, Case No. S-CV-0047815 (the "Action") to recover civil penalties based on allegations Defendant failed to provide legally compliant minimum wage, failure to pay earned wages and overtime time compensation, meal and rest periods, not providing hourly wages for missed breaks and meal periods, and reimburse them for necessary business expenses and failing to provide accurate itemized wage statements. For these alleged violations, Plaintiff sought penalties pursuant to the California Labor Code's Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* ("PAGA").

Defendant denied Plaintiff's allegations and disputed all of Plaintiff's claims. The Lawsuit was litigated and the Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on _____ and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

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

Page 11 of 12

560715.1

. . . . Plaintiff, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, and the State of California, fully releases and discharges Bhavin Mehta, Hemang Trivedi, Ravindram Ramoji, and Omkar, and all of Omkar's parents, subsidiaries, affiliates, predecessors, successors, assigns, past or present shareholders, members, officials, owners, officers, directors, attorneys, agents, insurers, representatives, current and former employees, heirs and assigns of each of them, and any other person, firm, or entity now, previously, or hereafter affiliated in any manner with Omkar (collectively, "the Released Parties"), from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, which were asserted in the Action or which could have been asserted in the Action that accrued during the Release Period [January 6, 2021, through {date of Court order}]

Release Period (from January 6, 2021 through _____).

If you have any questions, please contact _____ at (XXX) XXX-XXX.

SUPERIOR COURT OF CALIFORNIA COUNTY OF PLACER		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated): Weaver v. Omkar Rocklin, Inc., et al.		
ATTORNEY(S) NAME and ADDRESS Matthew R. Schoech, Esq. SCHOECH LAW GROUP, PC 3511 Del Paso Road, Ste 160, PMB 227 Sacramento, CA 95835	TELEPHONE Tel: (916) 569-1940 Fax: (916) 569-1939	
ATTORNEY(S) FOR: Plaintiffs	HEARING: DATE-TIME-DEPT:	CASE NUMBER S-CV-0047815

DECLARATION OF SERVICE
[CCP §§ 1013; 1013a; 2015.5]

I, the undersigned, declare I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; I am employed in the County of Sacramento, State of California, within which county the subject mailing occurred. My business address is 3511 Del Paso Road, Ste 160, PMB 227, Sacramento, California 95835. I served the documents named below on the parties in this action as follows:

DOCUMENTS SERVED: Plaintiff's Notice of Motion & Motion to Approve PAGA Settlement; Points & Authorities and Declaration of Matthew Schoech

SERVED UPON: See attached Service List.

- ☐ **BY MAIL:** I am readily familiar with the firm's practice for collection and processing documents for mailing with the U.S. Postal Service. I caused such documents to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at Sacramento, California that same day in the ordinary course of business. [CCP §1013]
- ☐ **BY FACSIMILE:** I caused the document(s) described herein to be transmitted from facsimile number (916) 569-1939 to the facsimile number(s) for each party indicated on the attached service list. [CCP §1013(e)]
- ☐ **BY OVERNIGHT MAIL:** I am readily familiar with the firm's practice for collection and processing of documents for mailing via overnight delivery. I caused such document(s) to be placed in a sealed envelope designated by the overnight service carrier, addressed to the person(s) on whom it is to be served pursuant to the attached service list, and deposited said envelope in a box or other facility regularly maintained by the overnight service carrier with delivery fees paid or provided for. [CCP §1013(c)]
- ☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, caused the document(s) described herein to be transmitted to the electronic service addresses for each party indicated on the attached service list. [CCP Section 1010.6]

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed on **June 23, 2023**, at Sacramento, California.

Brenda L. Graham

Brenda L. Graham,

Martin Weaver v. Omkar Rocklin, Inc., et al.

Placer County Superior Court Case No.: S-CV-0047815

Our File No. 2108012

Service List

Updated on June 23, 2023

Glen A. Van Dyke, Esq. Megan DeHerrera, Esq. Van Dyke Litigation & Trial Attorneys, PC 940 Southwood Blvd., Ste 102 Incline Village, NV 89451 Tel: 530/214-3667 glen@vdlitigation.com megan@vdlitigation.com kelsey@vdlitigation.com (Asst) <i>(electronic service authorized)</i>	Co-Counsel for PLAINTIFF
Sharon Ongerth Rossi, Esq. Aaron M. Scolari, Esq. Rogerts Joseph O'Donnell 311 California Street, 10 th Floor San Francisco, CA 94104 Tel: 415/956-2828 Fax: 415/956-6457 srossi@rjo.com ascolari@rjo.com mascarrunz@rjo.com (Asst) <i>(electronic service authorized)</i>	Attorneys for Defendants OMKAR ROCKLIN, INC. dba ROCKLIN PARK BHAVIN MEHTA HEMAND TRIVEDI and RAVINDRAN RAMOJI