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Clerk of the Superior Court
By Carla Brennan, Deputy Clerk

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Attorney for Defendant Bartell Hotels

and La Jolla Village Inn Associates

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JENNIFER PHAN, an individual, on
behalf of herself and on behalf of all
persons similarly situated; ALEJANDRO
OCHOA, an individual, on behalf of
himself and on behalf of all persons
similarly situated; LEOPOLDO
VAZQUEZ, an individual, on behalf of
himself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

BARTELL HOTELS, a California Limited
Partnership; BARTELL HOTELS
MANAGEMENT COMPANY, a
California Corporation; LA JOLLA
VILLAGE INN ASSOCIATES, a
California Limited Partnership; and DOES
1-50, Inclusive,

Defendant(s).

Case No.: 37-2022-00009712-CU-OE
CTL _____

**STIPULATION and ~~PROPOSED~~
ORDER APPROVING SETTLEMENT
OF PRIVATE ATTORNEY GENERAL
ACT ("PAGA") LAWSUIT**

Judge: Hon. Richard S. Whitney
Dept: C-68

Date Action Filed: March 14, 2022
Trial Date: None Set

1 **IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

2 By and through their respective counsel of record, Plaintiffs Jennifer Phan, Leopoldo
3 Vazquez, and Alejandro Ochoa ("Plaintiffs") and Defendants Bartell Hotels (erroneously sued as
4 Bartell Hotels Management Company) and La Jolla Village Inn Associates ("Defendants")
5 (collectively, the "Parties"), submit this Stipulation and Proposed Order to settle this Private
6 Attorney General Act ("PAGA") lawsuit, and request that the Court enter an Order in accordance
7 herewith.

8 WHEREAS, on October 13, 2021, Plaintiff sent a letter to the California Labor and
9 Workforce Development Agency ("LWDA") and Bartell Hotels Management Company, fulfilling
10 the administrative prerequisites to filing a Complaint against Bartell Hotels Management Company
11 alleging violations of the Private Attorney General Act ("PAGA"). The 65-day notice period for
12 the LWDA to notify of its intent to investigate expired on December 13, 2021. On March 9, 2022,
13 Plaintiff mailed an Amended PAGA Notice to the LWDA and Defendants on behalf of Leopoldo
14 Vazquez and Alejandro Ochoa, and added Defendants Bartell Hotels and La Jolla Village Inn
15 Associates.

16 WHEREAS, on March 14, 2022, Plaintiff Jennifer Phan filed a Representative Action
17 Complaint against Defendant Bartell Hotels Management Company alleging a single cause of action
18 for recovery of civil penalties for violation of the PAGA [Labor Code §§ 2698, *et seq.*] in the
19 Superior Court of the State of California, County of San Diego (Case No. 37-2022-00009712-CU-
20 OE-CTL) (the "Action"). On June 30, 2022, Plaintiff Jennifer Phan filed a First Amended
21 Complaint adding Plaintiffs Leopoldo Vazquez and Alejandro Ochoa and Defendants Bartell Hotels
22 and La Jolla Village Inn Associates. Defendants have answered the operative Complaint and deny
23 all liability in the Action.

24 WHEREAS, on July 13, 2022, the Parties engaged in a mediation session before mediator
25 Louis Marlin. Esq. Through arms-length negotiations with the assistance of the mediator, the Parties
26 reached an agreement to settle the Action, pursuant to a PAGA Settlement Agreement ("Settlement
27 Agreement"), a true and correct copy of which is attached hereto as Exhibit 1.

1 WHEREAS, the Parties also reached an agreement to resolve each of the Plaintiffs'
2 individual claims, pursuant to Confidential Individual Settlement Agreements and Releases
3 ("Individual Settlement Agreements"). If the Court requires review of the Individual Settlement
4 Agreements, the Parties agree to submit to the Court the Individual Settlement Agreements under
5 seal to preserve their confidentiality.

6 WHEREAS, pursuant to California Rule of Court 2699(1)(2), "[t]he superior court shall
7 review and approve any settlement of any civil action filed pursuant to this part."

8 WHEREAS, Plaintiffs submitted the Settlement Agreement to the LWDA at the same time
9 it was submitted to the Court for approval, proof of submission of which is attached hereto as Exhibit
10 2.

11 WHEREAS, the Parties stipulate that, pursuant to the Settlement Agreement, the Parties
12 wish to settle the Action on behalf of the "Aggrieved Employees" as defined in the Settlement
13 Agreement, which means "all individuals who were employed by any Defendant in California and
14 classified as a non-exempt employee during the PAGA Period." The PAGA Period is defined in
15 the Settlement Agreement as "the time period from January 8, 2021 to July 31, 2022.

16 WHEREAS, the Parties stipulate that, pursuant to the Settlement Agreement, upon final
17 distribution of the entire settlement funds, Plaintiff will file a request for dismissal with prejudice
18 of the Action.

19 WHEREAS, the Parties stipulate and agree that the Court shall retain jurisdiction to enforce
20 the terms of the PAGA Settlement Agreement pursuant to the Code of Civil Procedure section 664.6.

21 THEREFORE, it is stipulated, by and between the Parties, through their counsel of record,
22 that the Court enter an Order approving the Settlement Agreement as required by PAGA.

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1 **IT IS SO STIPULATED.**

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3 Dated: September 30, 2022

BARVIE LAW, APC

4
5 By: Nicole Barvie
6 Nicole Barvie
7 Attorneys for Plaintiffs

8
9 Dated: 9/30, 2022

**PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON, LLP**

10
11 By: J. Rod Betts
12 J. Rod Betts
13 Attorneys for Defendants
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1 ~~[PROPOSED]~~ ORDER APPROVING PAGA SETTLEMENT

2 The Court, having reviewed the Parties' Settlement Agreement, attached as Exhibit 1, and good
3 cause appearing, finds and orders as follows:

4 1. The Settlement Agreement and its terms shall be incorporated herein by reference into this
5 Order.

6 2. All terms used herein shall have the same meaning as defined in the Settlement Agreement.

7 3. The Court finds that the Settlement Agreement is fair, adequate, and reasonable and that the
8 settlement satisfies the standards and applicable requirements for approval of PAGA representative
9 actions under California law. Therefore, the Court approves the Settlement Agreement and enters
10 the terms of the Settlement Agreement as the Order of this Court.

11 4. The Court approves of the PAGA payments set forth in the Settlement Agreement, which
12 include the Individual PAGA Payments to be made to the Aggrieved Employees, the PAGA
13 Payment to the LWDA, the Administrative Expenses Payment to the Settlement Administrator, the
14 PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment, pursuant to
15 Labor Code §2699(1).

16 5. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the
17 provisions and timelines set forth in the Settlement Agreement.

18 6. Without affecting the finality of this Order Approving PAGA Settlement in any way, this
19 Court hereby retains continuing jurisdiction over the Parties as to all matters relating to the
20 administration, consummation, enforcement, and interpretation of the terms of the Settlement
21 Agreement and this Order, and for any other necessary purpose as permitted by Code of Civil
22 Procedure section 664.6 and any other applicable law.

23 7. After the Settlement Administrator pays all amounts due under the Settlement Agreement,
24 the Parties shall notify the Court, and the Court will enter Judgment releasing Defendants from all
25 claims in the Action as set forth in the Settlement Agreement, and shall dismiss the Action with
26 prejudice.

27 **8. The Court sets a**
28 **status conference in**
 regard to the status of
 payment, for April 7,
 2023 @ 10:00 am.

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IT IS SO ORDERED.

10/04/2022

Dated: _____



JUDGE OF THE SUPERIOR COURT

Exhibit 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Jennifer Phan, Alejandro Ochoa, and Leopoldo Vazquez (“Plaintiffs”) acting in their private attorney general capacity, and Defendants Bartell Hotels, a California Limited Partnership, Bartell Hotels Management Company, a California Corporation, and La Jolla Village Inn Associates, a California Limited Partnership (hereinafter collectively referred to as “Defendants”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

- 1.1 “Action” means the Plaintiffs’ PAGA lawsuit alleging wage and hour violations against Defendants captioned *Jennifer Phan, et al v. Bartell Hotels, LP, et al*, San Diego County Superior Court Case No. 37-2022-00009712-CU-OE-CTL initiated on March 14, 2022 and pending in the Superior Court of the State of California, County of San Diego.
- 1.2 “Aggrieved Employees” means all individuals who were employed by any Defendant in California and classified as a non-exempt employees during the PAGA Period.
- 1.3 “Aggrieved Employees Data” means the spreadsheet containing the list of Aggrieved Employees with their social security numbers, last known mailing addresses, and their dates of employment and/or pay periods worked as an Aggrieved Employee during the PAGA Period.
- 1.4 “Court” means the Superior Court of California, County of San Diego.
- 1.5 “Individual PAGA Payment” means the Aggrieved Employee’s pro rate share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employees worked during the PAGA Period.
- 1.6 “Defense Counsel” means Paul, Plevin, Sullivan & Connaughton, LLP.
- 1.7 “Effective Date” means the date on which the settlement in the Action is approved through entry of an Order and Judgment and either (i) the California Court of Appeal or California Supreme Court has rendered a final judgment affirming the Order and Judgment, or (ii) sixty-one (61) calendar days have passed since notice of entry of the Order and Judgment has been given to the parties and no timely appeal or request for review has been made.
- 1.8 “LWDA” means the California Labor Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd.(i).

- 1.9 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code Section 2699, subd.(i).
- 1.10 “Gross PAGA Settlement Amount” means the total sum of \$390,000 which is the total amount Defendants agree to pay under this Settlement Agreement. The Gross PAGA Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment. The Gross PAGA Settlement Amount shall be all-in with no reversion to Defendant.
- 1.11 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.12 “PAGA” means the Private Attorneys General Act (California Labor Code §§ 2698 *et seq.*).
- 1.13 “PAGA Payment” means the total amount remaining after payment of the Attorneys’ Fees, Attorneys’ Expenses and Costs, and Administration Costs from the Gross PAGA Settlement Amount. The PAGA Payment shall be allocated 75% to the LWDA and 25% to the Aggrieved Employees.
- 1.14 “Net Settlement Amount” means the Gross PAGA Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.15 “PAGA Period” means the time period from January 8, 2021 to July 31, 2022.
- 1.16 “Parties” means Plaintiffs Jennifer Phan, Leopoldo Vazquez and Alejandro Ochoa and Defendants Bartell Hotels, a California Limited Partnership, Bartell Hotels Management Company, a California Corporation, and La Jolla Village Inn Associates, a California Limited Partnership.
- 1.17 “PAGA Counsel” means the law firm of Barvie Law, APC., the attorneys representing the Plaintiffs in the Action.
- 1.18 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” means the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.19 “Settlement Administrator” or “Administrator” means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.20 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross PAGA Settlement Amount to reimburse its reasonable fees and expenses in

accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

- 1.21 "PAGA Notice" means Plaintiffs' October 12, 2021 PAGA letter to Defendants' and LWDA, and Plaintiffs' March 9, 2022 PAGA Letter to Defendants' and LWDA, providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22 "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.23 "Released PAGA Claims" means the claims being released by the Plaintiffs and PAGA Counsel and by the Aggrieved Employees as described in Section V below.
- 1.24 "Released Parties" means Defendant and any of its agents, officers, directors, employees, stockholders, members, parent corporations, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, and assigns of the foregoing.
- 1.25 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.26 "Bartell Hotels, a California Limited Partnership, Bartell Hotels Management Company, a California Corporation, and La Jolla Village Inn Associates, a California Limited Partnership" means Defendants.

II. RECITALS

- 2.1 PAGA Counsel mailed the PAGA Notice to the California Labor and Workforce Development Agency ("LWDA") on October 13, 2021 on behalf of Plaintiff Jennifer Phan, requesting authorization from the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004 ("PAGA") for the wage and hour violations alleged in the LWDA Notice. The 65-day notice period for the LWDA to notify of its intent to investigate expired on December 13, 2021. On March 9, 2022, Plaintiff mailed the Amended PAGA Notice to the LWDA and Defendants on behalf of Leopoldo Vazquez and Alejandro Ochoa, and added Defendants Bartell Hotels, a California Limited Partnership and La Jolla Village Inn Associates, a California Limited Partnership.
- 2.2 Pursuant to Labor code section 2699.3, subd(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3 On March 14, 2022, Plaintiff Jennifer Phan filed a Representative Action Complaint against Defendant Bartell Hotels Management Company alleging a single cause of action for recovery of civil penalties for violation of the PAGA [Labor Code §§ 2698, *et seq.*] in the Superior Court of the State of California, County of San Diego (Case No. Case No. 37-2022-00009712-CU-OE-CTL). On June 30, 2022, Plaintiff Jennifer Phan filed a First Amended Complaint adding Plaintiffs Leopoldo Vazquez and Alejandro Ochoa and Defendants Bartell Hotels, a California Limited Partnership and La Jolla Village Inn Associates, a California

Limited Partnership.

- 2.4 On July 13, 2022, the Parties engaged in a mediation session before mediator Louis Marlin. Through arms-length negotiations with the assistance of the mediator, the Parties reached an agreement to settle the Action which led to the signing of a Memorandum of Understanding.
- 2.5 As a result of the settlement, the Parties have agreed to fully and finally resolve the Released PAGA Claims alleged in the Action pursuant to this Settlement Agreement.
- 2.6 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

III. MONETARY TERMS

- 3.1 Gross PAGA Settlement Amount. Defendants promise to pay \$390,000.00 and no more as the Gross PAGA Settlement Amount. Defendants have no obligation to pay the Gross PAGA Settlement Amount prior to the deadlines stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross PAGA Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross PAGA Settlement Amount will revert to Defendants.
- 3.2 Payments from the Gross PAGA Settlement Amount. The Administrator will make and deduct the following payments from the Gross PAGA Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than a third of the Gross PAGA Settlement Amount, and PAGA Counsel Litigation Expenses Payment of not more than \$20,000. Defendants will not oppose requests for Court approval of these payments. PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendant, from any dispute or controversy regarding any division of sharing of any of these payments.

3.2.2 To the Administrator: An Administrator Expenses Payment not to exceed

\$10,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To the LWDA and Aggrieved Employees: The PAGA Payment shall be allocated 75% to the LWDA and 25% allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

IV. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 1,081 Aggrieved Employees who collectively worked a total 20,345 pay periods between January 8, 2021 through March 14, 2022. An authorized representative of Defendants will provide a declaration stating the number of Aggrieved Employees and pay periods worked between January 8, 2021 through March 14, 2022 within five days after this Agreement is executed by all parties. The Gross PAGA Settlement Amount will increase proportionally if the number of pay periods as of March 14, 2022 is more than 15% higher than 20,345.

4.2 Aggrieved Employee Data. Within thirty (30) days after this Agreement is executed by all parties, Defendants will deliver the Aggrieved Employee Data to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Settlement Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Settlement Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross PAGA Settlement Amount. Defendants shall fully fund the Gross PAGA Settlement Amount in two payments as follows: the first half (\$195,000) no earlier than March 1,

2023, and the second half (\$195,000) six months after that, no later than September 1, 2023, by transmitting the funds to the Settlement Administrator, provided that the other requirements of Memorandum of Understanding executed by the Parties, and this Settlement Agreement have occurred, the Court has approved the PAGA Settlement, and the Effective Date of the settlement has passed.

4.4 Payments from the Gross PAGA Settlement Amount. Within fourteen (14) days after Defendants fully fund the Gross PAGA Settlement Amount, the Settlement Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Settlement Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Settlement Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Children's Advocacy Institute: Child Welfare Scholarship and Journalism Awards in the name(s) of the absent Aggrieved Employees, subject to Court approval and the Aggrieved Employees shall remain bound by the Settlement. The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099. No attorney herein named or their firm has a connection to or relationship with the Children's Advocacy Institute that could reasonably create an appearance of impropriety as between the recipient and the attorneys named herein or their law firms.

4.4.4 The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

V. **RELEASE OF ALL CLAIMS.** Effective on the date when Defendants fully funds the entire Gross PAGA Settlement Amount, Plaintiffs, PAGA Counsel and the Aggrieved Employees will release claims against all Released Parties as follows:

5.1 **PAGA Release.** Upon entry of Judgment, the Effective Date and full funding, the Released Parties shall be entitled to a release from the State of California, the Aggrieved Employees and Plaintiffs for all “Released PAGA Claims.” “Released PAGA Claims” means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et seq.*, predicated on the California Labor Code violations that are asserted in the LWDA Notice and operative complaint (or PAGA Claims that could have been asserted based on the facts alleged in the operative LWDA Notice and operative complaint) which include, but are not limited to, civil penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections §§ 201, 202, 203, 204, 210, 218.6, 221, 226, 226.3, 226.7, 226.8, 227.3, 246 *et seq.*, 351, 353, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and all applicable Industrial Welfare Commission Wage Orders during the PAGA Period. The Released PAGA Claims do not include underlying Labor Code claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and workers’ compensation, or claims outside of the PAGA Period. The Released PAGA Claims do not include any claims that cannot be released as a matter of law. Plaintiffs, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Judgment on the Court’s Order Approving the PAGA Settlement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released PAGA Claims. In no event shall the release of the Released PAGA Claims in this Settlement Agreement release any individual claims of any individuals.

5.1.1 In addition to the Gross PAGA Settlement Amount, Defendants have agreed to separately settle each of the Plaintiffs’ individual claims pursuant to a separate confidential Individual Settlement Agreements. If the Court and/or the LWDA requires the Parties to submit the terms of Plaintiffs’ Individual Settlement Agreements to obtain approval of the PAGA settlement, the Parties agree that the terms of Plaintiffs’ Individual Settlement Agreement will only be submitted under seal or disclosed to the Court and/or LWDA in some other way to ensure that the Individual Settlement Amounts are not disclosed publicly.

5.2 **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notices for the entire PAGA Period.

5.3 **Release by PAGA Counsel:** PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts

stated in the Operative Complaint and the PAGA Notices.

5.4 Plaintiffs' Releases: Each Plaintiff is providing a general release of all known and unknown claims to the Released Parties relating to any and all claims, transactions or occurrences between them in an Individual Settlement Agreement as referred to in paragraph 5.1.1 above. This release includes a release of known and unknown claims including a waiver of Civil Code section 1542. This release specifically excludes a waiver of any claims Plaintiff may have as a PAGA representative (those claims are released in this Agreement) and under workers compensation law.

VI. MOTION FOR APPROVAL OF SETTLEMENT.

6.1 Court Approval of the PAGA Payment. Subject to Defendants' review and approval prior to filing, PAGA Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Settlement with the proposed Judgment ("Motion"). PAGA Counsel will provide Defendant's counsel with an opportunity for review and comments at least five business days before filing the Motion. PAGA Counsel shall also serve this Motion with the Agreement on the LWDA at the time the Motion is filed, pursuant to Labor Code Section 2699(1)(2).

6.2 Court Approval of the PAGA Settlement. The Settlement Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns. If the Court does not approve the Settlement Agreement, and either Party in good faith does not believe that it would be possible to make non-material modifications that would address any concerns raised by the Court, then each of the Parties by and through Counsel shall have the right to provide written notice thereof to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

VII. SETTLEMENT ADMINISTRATION

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185 to serve as the Settlement Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Settlement Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Settlement Administrator Duties. The Settlement Administrator has a duty to perform or observe all tasks to be performed or observed by the Settlement Administrator contained in this Agreement or otherwise. The Settlement Administrator will provide an accounting under oath to the parties of the amounts paid out.

VIII. MISCELLANEOUS PROVISIONS

8.1 Drafting. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

8.2 No Impact on Benefit Plans. Neither the Settlement Agreement nor any amounts paid to Plaintiffs or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendants' benefit plans, policy, or bonus program. Defendants retain the right, if necessary, to modify the language of their benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

8.3 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

8.4 Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

8.5 Authority. Defendants represent and warrant that the undersigned has the authority to act on behalf of Defendants and to bind Defendants to the terms of this Settlement Agreement. Plaintiffs represent and warrant that they have the capacity to act on their own behalf and on behalf of all who might claim through them to bind them to the terms and conditions of this Settlement Agreement.

8.6 Governing Law. This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in San Diego County, California and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Settlement

Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Diego.

- 8.7 Complete Agreement. The Parties acknowledge and represent that this Settlement Agreement contains the entire understanding between them with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between them, written and oral, with respect to the subject matter hereof. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.
- 8.8 Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the settlement of the Action as provided herein; or (ii) the settlement of the Action does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.
- 8.9 Judgment and Continued Jurisdiction. After approval of this settlement, the Parties agree that the Court shall retain continuing jurisdiction over this case under C.C.P. Section 664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this action to trial under C.C.P. Section 583.310 shall be extended from the date of the signing of this Agreement by all Parties until the entry of the final order and judgment or if not entered the date this Agreement shall no longer be of any force or effect. In the event that the Court does not approve the Settlement, or if the final order and judgment is reversed on appeal, then there shall be no Effective Date and this Agreement shall become null and void.
- 8.10 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their Counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement of the Action. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement of the Action, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the mediator to resolve such disagreement.
- 8.11 Execution in Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, this Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

- 8.12 Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.
- 8.13 Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
- 8.14 Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.
- 8.15 Severability. If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.
- 8.16 Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.
- 8.17 Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement and receive approval from the Court.
- 8.18 Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.
- 8.19 Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants or an admission or concession regarding the validity of the claims in the Action. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in

any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation or lack of violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in any court that has as its purpose the interpretation, implementation, or enforcement of the Settlement Agreement or any orders or judgments of the Court entered into in connection therewith.

- 8.20 No Admission of Liability or Wrongdoing by Defendants. Defendants contend that all of its employees were compensated in compliance with the law, and that its conduct was not willful with respect to any alleged failure to pay any wages or penalties. Defendants have denied, and continue to deny, each of the claims and contentions alleged in the Action. Defendants have asserted and continue to assert defenses thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Neither this Settlement Agreement, nor any action taken to carry out the terms of this Settlement Agreement, shall ever be construed as, offered, admitted, received or deemed to be evidence in any civil, criminal, administrative, or other proceeding against Defendants or any of the Released Parties, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing, or liability whatsoever.
- 8.21 Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of the Settlement Agreement, Plaintiffs and Defendants, inclusive, hereby waive any and all rights to appeal in connection with any issue in the Judgment, including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment will become final and non-appealable at the time it is entered.
- 8.22 Stay of Litigation. The Parties agree that the continuing litigation of the Action shall be stayed and that the time within which to bring this action to trial under C.C.P. Section 583.310 shall be extended from the date of the signing of this Settlement Agreement by all Parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect.
- 8.23 Confidentiality. Other than information necessary to secure Court approval of this settlement, the Parties agree to keep confidential all matters relative to this Settlement, including the terms of the Settlement and the facts and circumstances leading up to it. If asked about the disputes between the Parties, the Parties shall provide no other statement than "the matter has been resolved" or "the matter has settled." The Parties may, however, discuss the terms of this Settlement with their spouses, attorneys, financial advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual receiving information about the terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement. Except as set forth above, neither Plaintiffs nor PAGA Counsel shall issue a press release, hold a press conference, publish information about the settlement

on any website or social media, respond to any press inquiries, or otherwise publicize the settlement or communicate its terms in public or in private.

8.24 Court Filings. The Parties agree not to object to any Court filings consistent with and/or effectuating this Agreement.

8.25 Disputes. Any dispute between the Parties as to the remaining terms of the Settlement Agreement shall be presented to the mediator, Louis Marlin, for resolution.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

PLAINTIFFS:

Dated: _____

JENNIFER PHAN

Dated: _____

LEOPOLDO VASQUEZ

Dated: _____

ALEJANDRO OCHOA

DEFENDANTS:

Dated: 8-25-22

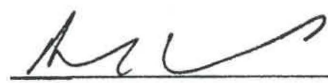
BARTELL HOTELS, LP



RICHARD BARTELL, PRESIDENT & CEO

Dated: 8-25-22

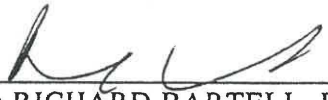
LA JOLLA VILLAGE INN ASSOCIATES



BY: RICHARD BARTELL, GENERAL
PARTNER

Dated: 8-25-22

BARTELL HOTELS MANAGEMENT
COMPANY


BY: RICHARD BARTELL, PRESIDENT

APPROVED AS TO FORM AND CONTENT:

BARVIE LAW, APC

Dated: _____

By: _____
NICOLE BARVIE, ESQ.
Counsel for Plaintiffs

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON, LLP

Dated: 8/25/22

By: 
J. ROD BETTS, ESQ.
Counsel for Defendants

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PLAINTIFFS:

Dated: 08 / 22 / 2022



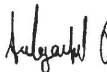
JENNIFER PHAN

Dated: 08 / 23 / 2022



LEOPOLDO VASQUEZ

Dated: 08 / 22 / 2022



ALEJANDRO OCHOA

DEFENDANTS:

Dated: _____

BARTELL HOTELS, LP

RICHARD BARTELL, PRESIDENT & CEO

Dated: _____

LA JOLLA VILLAGE INN ASSOCIATES

BY: RICHARD BARTELL, GENERAL
PARTNER

Dated: _____

BARTELL HOTELS MANAGEMENT
COMPANY

BY: RICHARD BARTELL, PRESIDENT

APPROVED AS TO FORM AND CONTENT:

BARVIE LAW, APC

Dated: 08 / 22 / 2022

By: 
NICOLE BARVIE, ESQ.
Counsel for Plaintiffs

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON, LLP

Dated: _____

By: _____
J. ROD BETTS, ESQ.
Counsel for Defendants

Exhibit 2



Nicole Barvie <nicole@barvielaw.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: nicole@barvielaw.com

Thu, Sep 29, 2022 at 3:11 PM

09/29/2022 03:10:49 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

On September 30, 2022, I served true copies of the following document(s) described as **STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEY GENERAL ACT ("PAGA") LAWSUIT** on the interested parties in this action as follows:

Attorney for Plaintiff
JENNIFER PHAN

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Polish

Priscilla Abugaber-Mercado