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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PERLA MARIN, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

HB LEISURE, INC., a Florida corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-00048225-CU-OE-CTL

(Assigned to the Honorable Eddie C. Sturgeon,
Department 67)

**DECLARATION OF LARRY W. LEE IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 6, 2023

Time: 9:00 a.m.

Dept.: 67

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I, Larry W. Lee, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Perla Marin (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

CASE SUMMARY

2. On or about November 10, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendant’s violations of the Labor Code sections described herein, pursuant to Labor Code § 2699.3.

3. On November 12, 2021, Plaintiff filed a wage and hour class action complaint, alleging causes of action for: (1) violation of California Labor Code §§ 510, 558, 1194, 1197, 1197.1; (2) violation of California Labor Code § 226; and (3) violation of California Business & Professions Code § 17200, *et seq.*

4. On January 10, 2022, Plaintiff filed a related action in the Superior Court of the State of California for the County of San Diego bearing Case No. 37-2022-00001086-CU-OE-CTL. The related complaint is a Representative Action for violation of the Private Attorneys General Act (“PAGA”).

5. The Parties engaged in both formal and informal discovery. Among other relevant topics, the discovery required Defendant to provide documents and information relevant to class certification, including the number of putative class members, the number of weeks worked and pay periods at issue, time and payroll records, the number of wage statements at issue, as well as information pertaining to Defendant's policies, practices, and procedures pertaining to overtime wages and wage statement practices.

6. Defendant's production allowed Plaintiff to conduct a damages analysis extrapolate from the sample. After a thorough investigation and evaluation of the facts and claims and negotiations conducted over the course of months, the Parties reached the current settlement.

1 7. In resolution of Plaintiff's class and PAGA claims, the Parties entered the Class
2 Action Settlement Agreement, a true and correct copy of which is attached hereto as Exhibit A.

3 **SUMMARY OF THE SETTLEMENT TERMS**

4 8. The terms of the class-wide settlement are set forth in the Class Action Settlement
5 Agreement ("Stipulation" or "Settlement Agreement"). A true and correct copy of the Stipulation
6 is attached hereto as **Exhibit A**.

7 9. The proposed class consists of "all individuals who are or previously were
8 employed by Defendant who were classified as non-exempt employees who were paid a bonus
9 and overtime wages in the same period and who were employed in California during the Class
10 Period." Based upon Defendant's records, there are 94 individuals that comprise the Class.
11 Stipulation ¶ III.C.5. Class Members do not need to do anything should they wish to receive their
12 share of the settlement funds. If a Class Member does not wish to take part in this settlement and
13 be bound by the release, he or she must submit a Request for Exclusion. *Id.* ¶ III.E.3.c.

14 10. The Stipulation provides for a Gross Settlement Amount of Eighty-Five Thousand
15 Dollars (\$85,000.00). *See* Stipulation ¶ I.S. The Net Settlement Amount (calculated after
16 deduction of attorneys' fees and costs, Class Representative Service Payment, PAGA Payment,
17 and Settlement Administration Costs) was estimated to be approximately \$26,716.67. Stipulation
18 ¶ I.U.

19 11. As part of the Settlement Agreement, Defendant does not object to Plaintiff's
20 Counsel's request for attorney's fees up to one-third of the Gross Settlement Amount – *i.e.*, the
21 sum of Twenty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
22 (\$28,333.33), plus up to Fifteen Thousand Dollars (\$15,000.00) for reimbursement of litigation
23 costs. *See* Stipulation ¶ III.B.2. Also, as part of the Settlement Agreement, Defendant does not
24 object to Plaintiff's request for a Class Representative Service Payment of Five Thousand
25 Dollars (\$5,000.00). *Id.* ¶ III.B.1.

26 12. Finally, the Settlement Agreement provides for the payment of costs to the
27 Settlement Administrator for the administration of this current settlement. The administration
28 costs are estimated not to exceed Five Thousand Nine Hundred Fifty Dollars (\$5,950.00). *Id.* ¶

1 III.B.4.

2 13. After deducting the amounts listed above, it is estimated that the Net Settlement
3 Amount of \$26,716.67 will be distributed to Participating Class Members. *Id.* ¶ III.C.2.

4 14. The amount distributed to each Participating Class Member (“Individual Class
5 Payment”) will depend on the number of pay periods worked by each Class Member during the
6 Class Period. Stipulation ¶ III.B.3.

7 15. Separate from the Net Settlement Amount distribution, PAGA Members will be
8 entitled to receive a portion of the PAGA Payment as an Individual PAGA Payment. Stipulation
9 ¶ III.B.3.

10 16. Separate from the Individual Class Payment, PAGA Members will be entitled to
11 receive an Individual PAGA Payment for the release of Released PAGA Claims. The amount
12 distributed to each PAGA Member will depend on the number of pay periods worked during the
13 PAGA Period. Stipulation ¶ III.B.3.

14 **POTENTIAL STATUTORY AND CIVIL PENALTIES**

15 17. I negotiated the settlement sum based on a clear understanding of the maximum
16 exposure in this case. Based on the class data provided by Defendant, Plaintiff estimated that
17 Defendant would face potential liability of up to approximately \$274,056 for Plaintiff’s class
18 claims, which is based on approximately \$159,456 in unpaid wages and \$114,600 in Labor Code
19 § 226 penalties. Plaintiff was able to estimate the potential damages and penalties based on data
20 provided by Defendant, including the number of employees in the putative class, the average rate
21 of pay and the number of wage statements at issue.

22 18. With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated
23 that Defendant could face civil penalties of up to a maximum \$123,700 if Plaintiff were
24 successful at trial, and without any reduction by the Court.

25 19. The total class and PAGA penalties are estimated to be approximately \$397,756.

26 20. Under the facts of this case, I appreciate the risk that Defendant could present a
27 persuasive argument to reduce the amount of PAGA penalties at trial. For example, in *Fleming v.*
28 *Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), while the plaintiff

ultimately prevailed in a PAGA trial predicated on a violation of Labor Code § 226(a), *i.e.*, inaccurate wage statements, the Court assessed only 17% of the maximum penalties – and this was after finding liability at trial. Similarly, Judge Carville of the Alameda Superior Court in the matter of *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103, assessed PAGA penalties upon Defendant of approximately 7% of the total maximum penalties—again, this was only after plaintiff had prevailed at trial. In one recent California Court of Appeal case, a trial court’s reduction of PAGA penalties by 90% was upheld. *Carrington v. Starbucks*, 30 Cal. App. 5th 504, 529 (2018).

21. Here, the Gross Settlement Amount is fair and reasonable as it is approximately 21% of the potential recovery of Plaintiff’s class and PAGA claims if Plaintiff was to fully succeed at trial and without any reduction by the Court.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

22. From the inception of the case, Class Counsel have zealously represented the interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative.

23. The Settlement Agreement calls for the Net Settlement Amount (calculated after deduction of attorneys’ fees, costs, Class Representative Service Award, and Settlement Administration Costs) to be paid to all Class Members. Based on an estimated Net Settlement Amount of \$26,716.67, Class Members will be entitled to recover, on average, up to \$284.22 per person. PAGA Members may potentially recover approximately \$10.64 per person.

24. The amount any Class Member is entitled to recover will be greater or lower, depending on the number of pay periods worked during the Class and PAGA Periods, with some entitled to receive more, and others less. This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly suffered greater harm. The amount may also vary depending on the number of timely Requests for Exclusion received by the Settlement Administrator and costs and awards approved by the Court.

25. Additionally, the scope of the release is appropriately limited. As a condition of participating in this settlement, Class Members waive and release “all claims and/or causes of

1 action occurring during the Class Period based on facts that were pled in the operative class
2 action including, the failure to pay overtime compensation, the failure to provide accurate
3 itemized statements, waiting-time penalties, Business and Professions Code section 17200
4 predicated on the claims pled in the operative class action complaint. This release expressly
5 excludes claims for vested benefits, wrongful termination, unemployment insurance, disability,
6 social security, workers' compensation, and class claims outside of the Class Period ("Released
7 Class Claims"). Stipulation ¶ III.F.1. The Class Period is defined as the period of November 12,
8 2017 through December 31, 2022. *Id.* ¶ I.J.

9 26. In addition, "Upon funding of the Gross Settlement Amount, Defendant shall
10 receive a release from the State of California of all PAGA claims pled in the operative complaint
11 and PAGA letter sent by the Plaintiff that occurred during the PAGA Period as to the Class
12 Members, and expressly excluding claims for vested benefits, wrongful termination,
13 unemployment insurance, disability, social security, workers' compensation, and class claims
14 outside of the Class Period and PAGA claims outside of the PAGA Period." Stipulation ¶ III.F.2.
15 The PAGA Period is November 8, 2020 to December 31, 2022. *Id.* ¶ I.W.

16 27. I believe that Plaintiff and the Class could prevail at trial. However, I also believe
17 in the fairness of the settlement, which is based on factoring in the inherent risks in drawn-out
18 litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to
19 establish liability. Moreover, as Defendant adamantly denies that it should be liable for the full
20 extent of the penalties, there is a possibility that Plaintiff and the Class would be awarded fewer
21 or no penalties at trial.

22 28. Thus, after taking into account sharply disputed legal issues involved in this
23 litigation, the risks associated with further prosecution, delays caused by potential appeals, and
24 the substantial benefits to be received pursuant to the Settlement Agreement, I believe that the
25 proposed settlement is fair, reasonable, and adequate and is in the best interests of the Class.

26 **ATTORNEY EXPERIENCE**

27 29. Class Counsel have a great deal of experience in wage and hour class action
28 litigation and have been approved as class counsel in a number of class actions. My co-counsel

1 and I can and will adequately represent the Class Members in this action and will pursue this
2 lawsuit to its conclusion. I have no conflicts with the Class and will adequately represent the
3 Class.

4 30. From the inception of the case, Class Counsel have zealously represented the
5 interests of the Class. I have spent significant time researching and pursuing the claims that have
6 been alleged in this action. From the inception of the case, my co-counsel and I have solely
7 represented the interest of the Class and have expended significant time and resources reviewing
8 the pleadings, meeting and conferring with defense counsel, calculating and analyzing the
9 potential range of recoverable penalties, preparing for and attending mediation, negotiating the
10 terms of the settlement, and drafting the Settlement Agreement. The settlement was obtained for
11 the benefit of the Class, not for the individual Plaintiff. Based on my review of all the
12 information, and based on my experience in class action litigation, I believe this settlement to be
13 fair, adequate, and reasonable.

14 31. Based on my review of all the information, and based on my experience in class
15 action litigation, I believe this settlement to be fair, adequate, and reasonable.

16 32. Although Plaintiff believes that a class can be certified, Plaintiff also believes in
17 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
18 involved in not prevailing on one or more of the causes of action or theories alleged in the
19 operative Complaint, the possibility of non-certification, and the potential for appeals.

20 33. I have spent significant time researching and pursuing the claims that have been
21 alleged in this action. Each side has apprised the other of their respective factual contentions,
22 legal theories, and defenses, resulting in negotiations taking place between the Parties. The
23 Parties have engaged in informal discovery, with the voluminous production of documents and
24 sample payroll data.

25 34. I am one of the primary attorneys on this matter. My qualifications are as follows:
26 I received my J.D. from Arizona State University College of Law in 2003. During law school, I
27 was a summer associate at the law firm of Brobeck, Phleger & Harrison. I graduated cum laude
28 from Arizona State University College of Law in the top 10% of my class. While I was in law

1 school, I was the Associate Managing Editor of the Arizona State University College of Law,
2 Law Journal. Upon graduation, I practiced law as an associate at the Los Angeles County offices
3 of Ogletree Deakins Nash Smoak & Stewart, P.C., a national employment defense law firm that
4 represents a significant number of Fortune 500 companies.

5 35. My firm's primary focus is employment law. I have handled a number of wage
6 and hour matters including class actions and multiple-plaintiff actions. I have a practice that
7 encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the
8 San Francisco County Superior Courts, the San Diego County Superior Courts, and the United
9 States District Courts for the Central, Eastern, Northern, and Southern Districts of California.

10 36. I have been named as class counsel in a number of class actions that have been
11 granted final approval by the Superior Courts of Los Angeles County, Orange County, San
12 Francisco County, Alameda County, Contra Costa County, Monterey County, San Bernardino
13 County, Santa Clara County, Sonoma County, and the United States District Court for the
14 Central, Eastern, and Northern Districts of California, including but not limited to the following
15 class actions: *Chan Lanier v. Citigroup, Inc. et al.*, San Francisco Superior Court Case No. CGC-
16 05-445143; *Naqvi v. Acoustic Home Loans et al.*, Orange County Superior Court Case No.
17 05CC00263; *Ortega v. AIG*, Central District of California Case No. CV 06-0196-RSWL (PJWx);
18 *Universal Protection Overtime Cases*, Orange County Superior Court, Judicial Council
19 Coordination Proceeding No. 4480; *Tse v. Best Buy*, Los Angeles Superior Court Case No.
20 BC392717; *Hernandez v. CVS Corp. et al.*, Judicial Council Coordination Proceeding No. 4539;
21 *Padilla v. Safeway*, San Benito County Superior Court Case No. CU-16-00182; *Valles v.*
22 *Community Hospital of the Monterey Peninsula*, Monterey County Superior Court Case No.
23 17CV003452; *DirecTv Wage and Hour Cases*, Santa Clara Superior Court Judicial Council
24 Coordination Proceeding No. 4850; *Perez v. Standard Drywall, Inc.*, Alameda County Superior
25 Court Case No. RG15761142; and *Davis v. Nugget Market, Inc.*, Yolo County Superior Court
26 Case No. CV-18-558.

27 37. I do not have any relationship with Free to Thrive.

28 38. Concurrent with the filing of this Motion, my office has also uploaded a copy of

1 the Settlement Agreement and this Motion to the LWDA. Further, my office will submit a copy
2 of the Court's judgment and order approving the Settlement Agreement to the LWDA within ten
3 (10) days after entry of judgment or order.

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

6 Executed on this 1st day of May 2023, at Los Angeles, California.

7 
8 _____
Larry W. Lee

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is made by and between plaintiff Perla Marin (hereinafter "Plaintiff") and Defendant HB Leisure, Inc. (hereinafter "Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. "Action" means the Class Action Complaint that was filed in California state court and any amendments thereto, which is captioned *Marin v. HB Leisure Inc.*, Case No. 37-2021-00048225-CU-OE-CTL and consolidated with *Marin v. HB Leisure Inc.*, Case No. 37-2022-00001086-CU-OE-CTL, pending in Superior Court of the State of California, County of San Diego.
- B. "Aggrieved Employees" means all non-exempt employees who were paid a bonus and overtime wages in the same periods and who were employed in California during the PAGA period.
- C. "Class" means all individuals who are or previously were employed by Defendant who were classified as non-exempt employees who were paid a bonus and overtime wages in the same period and who were employed in California during the Class Period.
- D. "Class Counsel" means Larry W. Lee and Christine S. Lee of Diversity Law Group, P.C., Edward W. Choi of Law Offices of Choi & Associates, and William L. Marder of Polaris Law Group.
- E. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. "Class Data" means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her email address (if known); and the number of pay periods a Class Member was paid a bonus and overtime wages in the same pay period during the Class Period and the number of pay periods an Aggrieved Employee was paid a bonus and overtime wages in the same pay period during the PAGA Period, exclusive of any pay periods previously released.
- G. "Class Member" is a member of the Class.

- H. "Class Notice" means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.
- I. "Class Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).
- J. "Class Period" means the period of time from November 12, 2017 to December 31, 2022.
- K. "Class Representative Service Payment" means the service payment made to Plaintiff in her capacity as Class Representative in order to compensate her for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant's expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.
- L. "Court" means the Superior Court of California, County of San Diego.
- M. "Defendant" means HB Leisure, Inc.
- N. "Defendant's Counsel" means Paul F. Sorrentino and Arcelia N. Magaña of Jackson Lewis P.C.
- O. "Effective Date" means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I.Q of this Agreement.
- P. "Election Not to Participate in Settlement" means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- Q. "Final" means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, upon the entry of the Court's order granting Final Approval of the Settlement.
 2. If an objection to the Settlement is made, sixty (60) days after final approval or after any appeal is dismissed or withdrawn, or appeal is decided upholding propriety of settlement.
- R. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.

- S. "Gross Settlement Amount" means Eighty-Five Thousand Dollars (\$85,000) to be paid by Defendant as provided by this Agreement. This Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments of Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant. The Gross Settlement Amount is all in with no reversion to Defendant and shall be paid without the need to submit a claim form.
- T. "Judgment" means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- U. "Net Settlement Amount" means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
- V. "Non-Participating Class Member" means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- W. "PAGA Period" means the period of time from November 8, 2020 to December 31, 2022.
- X. "Participating Class Member" means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- Y. "Preliminary Approval of the Settlement" means the Court's Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- Z. "Released Parties" collectively mean: Defendant, and its parent companies, subsidiaries, affiliates, joint ventures, predecessors, successors, and related parties and all of their past and present directors, officers, shareholders, members, managers, joint employers, co-employers, integrated enterprises, representatives, employees and anyone else acting for any of them.
- AA. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- BB. "Settlement Administrator" means the third-party settlement administrator proposed by the Parties, as approved by the Court.
- CC. "Settlement Share" means each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On November 12, 2021, Plaintiff filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00048225-CU-OE-CTL. Plaintiff asserted claims that Defendant:
 - 1. Violated Labor Code § § 510, 558, 1194, 1197, and 1197.1;
 - 2. Violated Labor Code § 226; and
 - 3. Violated California Business and Professions Code § 17200 *et seq.*
- B. On January 10, 2022, Plaintiff filed a Private Attorneys General Act (“PAGA”) Complaint in the Superior Court of the State of California, County of San Diego, Case No. 37-2022-00001086-CU-OE-CTL. Plaintiff asserted a claim for recovery of civil penalties pursuant to PAGA, Cal. Labor Code §§ 2698, *et seq.*
- C. On February 1, 2022, the aforementioned Class and PAGA actions were consolidated, with Case No. 37-2021-00048225-CU-OE-CTL acting as the lead case.
- D. On or about November 13, 2022, the Parties were able to agree to settle the Action which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- E. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Eighty-Five Thousand Dollars (\$85,000). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.

B. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To Plaintiff:** In addition to the Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$5,000 as the Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment of no more than \$5,000 for Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$5,000 for Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to Plaintiff with respect to the payment, who will assume full responsibility and liability for the taxes due on her Class Representative Service Payment.
2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third (33 1/3%) of the Gross Settlement Amount, which is presently \$28,333.33, as their Class Counsel Fees Payment and an amount not more than \$15,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$28,333.33, and \$15,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.
3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$4,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$3,000) to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$1,000) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period. If the Court approves a PAGA Payment of less than \$4,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the

Released PAGA Claims as set forth below, whether or not they opt out of the Settlement. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$5,950.00 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$5,950.00, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendant shall provide the Settlement Administrator with the total number of pay periods a Class Member was paid a bonus and overtime wages in the same pay period during the Class Period; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total pay periods to determine a dollar amount per pay period ("Pay Period Rate"); and (iii) the Settlement Administrator shall then take the number of pay periods reduced by pay periods whereby the Participating Class Member previously released claims, if any, by each Participating Class Member and multiply it by the Pay Period Rate to calculate their Settlement Share.
3. **Withholding.**
 - a. Subject to approval by the Court, ten percent (10%) of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. The Settlement Administrator shall be responsible for remitting to the tax authorities employees' and employer's share of all payroll taxes on the Wage Portion.
 - b. Subject to approval by the Court, five percent (5%) of each Participating Class Member's Settlement Share is in settlement of

claims for interest and eighty-five percent (85%) of each Participating Class Member's Settlement Share is in settlement of claims for penalties, including waiting time penalties and PAGA penalties, allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

- c. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defendant's Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members' failure to pay taxes on any amounts paid pursuant to this Settlement.
4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that an Aggrieved Employee will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion.
 5. **Class Size Modification.** Defendant has represented that the class consists of an estimated total of 94 Class Members who received an estimated 1,193 pay periods during the Class Period as of July 22, 2022 in which he/she was paid overtime and bonuses in the same pay period. In regard hereto, Defendant will provide a declaration under oath prior to the filing of the motion for preliminary approval as to the number of applicable pay periods during the Class Period. Should the number of applicable pay periods in the Class Period increase by more than 10.1% (120 pay periods) or exceed a total of 1,313 pay periods, Defendant will have the option to increase the Gross Settlement Amount by a proportionate additional amount for each additional qualifying pay period or, if Defendant declines to exercise this option, the Gross Settlement Amount will cover no more than 1,313 total pay periods (10.1% more than 1,193, the number of pay periods as of July 22, 2022), and the end of the Class Period and PAGA Period will be moved back to only cover the Class Period and PAGA Period during which no more than 1,313 pay periods were received by the Class Members.
- D. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Phoenix Administrators as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's

duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. Within sixty (60) days of Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall

work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:
 - a. No later than thirty (30) days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.
 - b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-

upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the response date for written objections, disputes and opt-outs will be extended an additional 15 days, and the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
 - e. Not later than ten (10) days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
3. **Objections to Settlement; Disputes as to Dates of Employment allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to pay periods allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:
- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, postmarked not later than forty-five

(45) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. If a Class Notice Packet is re-mailed, the response date for written objections will be extended an additional fifteen (15) days. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

- b. **Disputes as to Dates of Employment.** Each Class Member or Aggrieved Employee shall also have forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the number of pay periods the Class Notice allocates to them during the Class Period and/or PAGA Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable. If a Class Notice Packet is re-mailed, the response date for disputes will be extended an additional fifteen (15) days.
- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. If a Class Notice Packet is re-mailed, the response date for opt-outs will be extended an additional fifteen (15) days. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that an Aggrieved Employee will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class Notice will

automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If the number of Class Members who timely submit valid Elections Not to Participate in Settlement is five percent (5%) or more of the Class, Defendant, at its sole discretion, shall have the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation rights, if at all, within fifteen (15) days of the deadline for submission of Elections Not to Participate in Settlement by providing written notice to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Settlement Administration Expenses as of the date that Defendant exercises the right to void the Settlement pursuant to this Paragraph will be paid by Defendant.
5. **No Solicitation.** The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit or any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiff files the Motion for

Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.

- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
 - c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement

(including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments and the PAGA Payment in accordance with this Agreement.

10. **Uncashed Settlement Share Checks.** A Participating Class Member or Aggrieved Employee must cash his or her Settlement Share check within one hundred and eighty (180) days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If the check remains uncashed by the expiration of the 180 days period, the funds from such uncashed checks will be paid as follows:
 - a. Twenty-five percent (25%) to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund established in Section 77209 of the Government Code, and subject to appropriation in the annual Budget Act for the Judicial Council to

provide grants to trial courts for new or expanded collaborative courts or grants for Sargent Shriver Civil Counsel; and

- b. Seventy-five percent (75%) to Free to Thrive, a nonprofit organization helping survivors of human trafficking by providing restorative justice by expunging their criminal records to enable them to become gainfully employed and to rejoin the community.
- c. The Parties and/or Counsel for the Parties do not have any interests or involvement within the governance or work of USA and pursuant to subdivision (k) of Rule 3.769 of the California Rules of Court, the Parties and their attorneys represent that they have no connection or relationship with any of these non-party recipients of these distributions that could reasonably create an appearance of impropriety between the recipients and the interest of the Class as set forth in CCP section 382.4.

The Participating Class Member or Aggrieved Employee whose check remains uncashed and whose funds are paid as set forth above pursuant to paragraphs III.E.10(a)-(b) will remain bound by the Settlement. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members or Aggrieved Employees, whether or not they all cash their Settlement Share checks.

11. **Final Report by Settlement Administrator to Court.** Within ten (10) days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon funding of the Gross Settlement Amount, the Released Parties shall receive a release from the Participating Class Members of all claims and/or causes of action occurring during the Class Period based on facts that were pled in the operative class action including, the failure to pay overtime compensation, the failure to provide accurate itemized statements, waiting-time penalties, Business and Professions Code section 17200 predicated on the claims pled in the operative class action complaint. This release expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period ("Released Class Claims").
2. **Aggrieved Employees.** Upon funding of the Gross Settlement Amount, Defendant shall receive a release from the State of California of all PAGA claims pled in the operative complaint and PAGA letter sent by the Plaintiff

that occurred during the PAGA Period as to the Class Members, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside of the PAGA Period.

3. **Plaintiff.** Upon funding of the Gross Settlement Amount, Plaintiff generally releases and discharges the Released Parties from all claims and/or causes of action and/or violations occurring during the Class Period under any federal, state or local law or administrative order that were or could have been plead in the operative class action and PAGA complaint and amendments, PAGA notice letters and amendments, and administrative claims, whether known or unknown, including the failure to pay overtime compensation, the failure to provide accurate itemized statements, waiting-time penalties, Business and Professions Code section 17200 predicated on the claims pled in the operative class action complaint. This release expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside of the PAGA period.

4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

5. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

H. **Limitation on Public Statements About Settlement.** The named Parties and their attorneys will keep the settlement confidential through Preliminary Approval of the Settlement, other than filing documents with the Court. Thereafter, the named Parties and their attorneys agree to make no comments to the media or otherwise publicize or post the terms of the settlement, other than notices to the class. If Plaintiff or Class Counsel or Defendant or Defendant's Counsel receives an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Nothing in this provision shall prevent Defendant or Plaintiff from making any required disclosures.

I. **Miscellaneous Terms.**

1. **No Admission of Liability or Class Certification for Other Purposes.**

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaim any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The Parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct

related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments.** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice.** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or

taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

6. **Modification of Agreement.** Except as set forth in section III.I.2 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Larry Lee
Christine S. Lee
Diversity Law Group, P.C.

Edward W. Choi
Law Offices of Choi & Associates
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To Defendant:

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paul.sorrentino@jacksonlewis.com
arcelia.magana@jacksonlewis.com

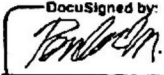
14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement. The prevailing party to

any such enforcement action shall be entitled to recover its attorneys' fees and costs incurred in any such enforcement action.

IV. EXECUTION BY PARTIES AND COUNSEL

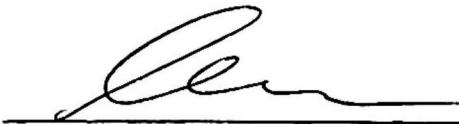
The Parties and their counsel hereby execute this Agreement.

Dated: 3/21/2023

DocuSigned by:

3/21/2023 5:20:48 PM

Plaintiff Perla Marin

Dated: 3/30/2023



Xando Miller
For Defendant HB Leisure, Inc.

Dated: 3/22/2023



Larry W. Lee
Diversity Law Group, P.C.
Attorney for Plaintiff

Dated: 3/22/2023



Edward W. Choi
Law Offices of Choi & Associates
Attorney for Plaintiff

Dated: 3/22/2023



William L. Marder
Polaris Law Group
Attorney for Plaintiff

Dated: March 30, 2023



Paul F. Sorrentino
Arcelia N. Magaña
Jackson Lewis P.C.
Attorneys for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

**sNOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

**(*Marin v. HB Leisure, Inc.*, Superior Court of the State of California, County of San Diego,
Case No. 37-2021-00048225-CU-OE-CTL, consolidated with Case No. 37-2022-00001086-
CU-OE-CTL)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<< >>. See the explanation in Section 5 below. If you do nothing, you will be considered a Participating Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request to be excluded from the Settlement, you will receive no money from the Settlement and you will not be bound by the Settlement. However, if you are an Aggrieved Employee who opts out, you will still be paid your allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion. If you choose to do so, you must notify the Settlement Administrator as explained in Section 7 below.
Object	Write to the Court about why you do not agree with the Settlement or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

Your options are further explained in this Class Notice. To exclude yourself from, or object to, the Settlement you must take action by certain deadlines. If you want the Settlement as proposed, you don't need to do anything to obtain your share of the Settlement. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Diego (the “Court”) has been reached between Plaintiff Perla Marin (“Plaintiff”) and Defendant HB Leisure, Inc. (“Defendant”) and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All individuals who are or previously were employed by Defendant who were classified as non-exempt employees who were paid a bonus and overtime wages in the same period and who were employed in California during the Class Period.

The Class Period is November 12, 2017, through December 31, 2022.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On November 12, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Diego, alleging the following class claims against Defendant: failure to pay wages including overtime and minimum wage; failure to provide accurate itemized wage statements; and unfair business practices (the “Class Complaint”). On January 10, 2022, Plaintiff filed a separate Complaint against Defendant in the Superior Court of the State of California, County of San Diego, alleging a single cause of action under the Private Attorneys General Act California Labor Code §§ 2698, *et seq.* (the “PAGA”) alleging that Defendant: failed to pay wages including overtime and minimum wage; failed to timely pay wages; and failed to provide accurate itemized wage statements (the “PAGA Complaint”). On February 1, 2022, the Court consolidated the Class Complaint and the PAGA Complaint for all purposes. This lawsuit is referred to as the “Action.”

Defendant denies and disputes all such claims. Specifically, Defendant contends that Plaintiff and the Class Members were properly compensated for wages under California law; that Defendant complied with California wage statement requirements; that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action; that Defendant did not engage in unfair business practices; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms: Diversity Law Group, P.C.; Law Offices of Choi and Associates; and Polaris Law group to serve as Class Counsel.

3. What are the terms of the Settlement?

Defendant has agreed to pay an “all in” amount of Eighty-Five Thousand Dollars (\$85,000) (the “Gross Settlement Amount”) to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Class Members contemplated by the Settlement, the Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment for civil penalties. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within thirty (30) days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The “Effective Date” means the date of entry of the Court’s order granting Final Approval of the Settlement, or if there are objections or any appeal, sixty (60) days after final approval or after any appeal is dismissed or withdrawn or appeal is decided upholding propriety of settlement. Fifteen (15) days after the Settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Participating Class Members.

Amounts to be Paid From the Gross Settlement Amount. The proposed payments subject to Court approval will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request to be excluded from the Settlement (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$5,950.00, for expenses, including without limitation, expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Settlement Shares and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys’ fees not to exceed thirty-three and one-third percent (33.3%) of the Gross Settlement Amount, which is presently \$28,333.33 and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$15,000.00. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payment. Class Representative Service Payment in an amount not to exceed Five Thousand Dollars (\$5,000.00) to the Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Payment. A payment of \$4,000 relating to the claim for penalties under the PAGA, \$3,000.00 of which will be paid to the State of California’s Labor and Workforce

Development Agency (“LWDA Payment”). The remaining \$1,000.00 will be distributed to the Aggrieved Employees based on their respective pay periods during the PAGA Period (November 8, 2020 through December 31, 2022). “Aggrieved Employees” means all non-exempt employees who were paid a bonus and overtime wages in the same periods and who were employed in California during the PAGA Period. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed as Settlement Shares to the Participating Class Members. The Net Settlement Amount is estimated to be approximately \$26,716.67, based upon the above proposed deductions. Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member, which shall be calculated as follows: (i) Defendant will provide the Settlement Administrator with the total number of pay periods a Class Member was paid a bonus and overtime wages in the same pay period during the Class Period; (ii) the Settlement Administrator will divide the Net Settlement Amount by the total pay periods to determine a dollar amount per pay period (“Pay Period Rate”); and (iii) the Settlement Administrator will take the number of pay periods (reduced by pay periods whereby the participating Class Member previously released claims, if any) for each Participating Class Member and multiply it by the Pay Period Rate to calculate their Settlement Share.

Tax Matters. Ten percent (10%) of each Participating Class Member’s Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Five percent (5%) of each Participating Class Member’s Settlement Share is in settlement of claims for interest and eighty-five percent (85%) of each Participating Class Member’s Settlement Share is in settlement of claims for penalties, including waiting time penalties and PAGA penalties, allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant’s Counsel intend or represent that anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon funding of the Gross Settlement Amount, the Released Parties shall receive a release from the Participating Class Members of all claims and/or causes of action occurring during the Class Period based on facts that were pled in the operative class action

including, the failure to pay overtime compensation, the failure to provide accurate itemized statements, waiting-time penalties, Business and Professions Code section 17200 predicated on the claims pled in the operative class action complaint. This release expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period ("Released Class Claims").

Released PAGA Claims. Upon funding of the Gross Settlement Amount, Defendant shall receive a release from the State of California of all PAGA claims pled in the operative complaint and PAGA letter sent by the Plaintiff that occurred during the PAGA Period as to the Class Members, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period and PAGA claims outside of the PAGA Period. The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request to be excluded from the Settlement.

5. How much will my payment be?

Based on the calculations of payments to Class Members discussed above, your estimated Settlement Share from the Net Settlement Amount is << >>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than [forty-five (45) days after the mailing of the Class Notice or 60 days after the Class Notice in the case of re-mailing].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Settlement Share will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator can be contacted at: Phoenix Settlement Administrators or (800) 523-5773.

The Court will hold a Final Approval Hearing on [redacted], 2023, at [redacted] to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service awards to the Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately forty-five (45) days after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendant for the Released Class Claims. However, Aggrieved Employees who opt out will still be paid their

allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless whether they submit a request for exclusion.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than [REDACTED] [forty-five (45) days after the date of the Class Notice or sixty (60) days after the Class Notice in the case of re-mailing]. The request to opt-out must be postmarked or received by the Settlement Administrator by this deadline and should: (1) contain a clear statement that you are requesting to opt out of, or be excluded from the Class and Released Class Claims in the *Marin v. HB Leisure, Inc.* lawsuit; (2) contain the name, address, and the last four digits of the Social Security Number of the person requesting exclusion; (3) state the Class Member's request to exclude himself or herself from the Settlement and to opt out of the Settlement; and (4) be signed by the Class Member or his or her lawful representative. Please include the name and number of the case, which is *Marin v. HB Leisure, Inc.*, Case No. 37-2021-00048225-CU-OE-CTL. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is [INSERT ADMINISTRATOR ADDRESS]. Written requests for exclusion from the Settlement that are postmarked after [REDACTED], or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, the costs and/or the service awards, either in writing or in person. Objections that are in writing should state the Class Member's name, current address, telephone number, and the dates of employment in California by Defendant, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Marin v. HB Leisure, Inc.*, in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00048225-CU-OE-CTL.

All written objections must be mailed to the Settlement Administrator at [REDACTED], no later than [REDACTED] [forty-five (45) days after the date of the Class Notice or sixty (60) days after the Class Notice in the case of re-mailing].

Alternatively, Class Members may appear in person or remotely at the Final Approval Hearing on [REDACTED] at [REDACTED] to make an oral objection without submitting a written objection or to otherwise participate in the Final Approval Hearing. Check the Court's website for the most current information concerning appearances and procedures at the Court - <https://www.sdcourt.ca.gov/sdcourt/generalinformation>. For assistance in making an appearance at the Final Approval Hearing, please contact Class Counsel below.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The addresses for Parties' counsel are as follows:

Class Counsel:

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Christine S. Lee
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Counsel for Defendant:

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Email:
Paul.sorrentino@jacksonlewis.com
Arcelia.magana@jacksonlewis.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at [REDACTED] on [REDACTED], at the San Diego Superior Court, located at 330 W Broadway, San Diego, California 92101, in Department C-67 before Judge Eddie C. Sturgeon. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing. Hearing dates are posted on the Internet via the Register of Actions page for the California Superior Court for the County of San Diego and entering Case No. 37-2021-00048225-CU-OE-CTL.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at (800) 523-5773 or write to *Marin v. HB Leisure, Inc.* Settlement Administrator, c/o Phoenix Settlement Administrators; or contact Class Counsel at [REDACTED].

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs, and service awards, the motion for final approval, or other Settlement documents by contacting Class Counsel. You may also get more details by examining the Court's file on the Internet via the Register of Actions for the San Diego Superior Court (<https://roa.sdcourt.ca.gov/roa/faces/NameSearch.xhtml>) and entering the Case No. 37-2021-00048225. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the San Diego Superior Court: Hall of Justice, 330 W. Broadway, San Diego, California 92101.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date will be printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds as follows: Seventy-five percent (75%) to Free to Thrive, a non-profit organization helping survivors of human trafficking by providing restorative justice to enable them to become gainfully employed and rejoin the community; and twenty-five percent (25%) to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund established in Section 77209 of the Government Code, and subject to appropriation in the annual Budget Act for the Judicial Council to provide grants to trial courts for new or expanded collaborative courts or grants for Sargent Shriver Civil Counsel.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

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Email: edward.choi@choiandassociates.com

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PERLA MARIN, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

HB LEISURE, INC., a Florida corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-00048225-CU-OE-CTL

(Assigned to the Honorable Eddie C. Sturgeon,
Department 67)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: October 6, 2023

Time: 9:00 a.m.

Dept.: 67

1 Plaintiff Perla Marin's ("Plaintiff") Motion for Preliminary Approval of Class Action
2 Settlement was filed with the Court on May 1, 2023, and a hearing was held before this Court on
3 October 6, 2023.

4 The Court has considered the Class Action Settlement Agreement ("Stipulation" or
5 "Settlement Agreement") and all other papers filed in this action.

6
7 NOW THEREFORE, IT IS HEREBY ORDERED:

8 1. This Court grants preliminary approval of the Settlement Agreement between
9 Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate,
10 and reasonable to the Class;

11 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through
12 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
13 Litigation on behalf of the Class (as defined below and in the Settlement Agreement) as a whole;

14 3. The Court hereby conditionally certifies the following Class for settlement
15 purposes only:

16
17 All individuals who are or previously were employed by
18 Defendant who were classified as non-exempt employees who
19 were paid a bonus and overtime wages in the same period and who
20 were employed in California during the Class Period.

21 Should for whatever reason the Settlement Agreement not become Final, the fact that the
22 Parties were willing to stipulate to certification of a class as part of the Settlement Agreement
23 shall have no bearing on, or be admissible in connection with, the Litigation or the issue of
24 whether a class should be certified in a non-settlement context.

25 4. The Court appoints and designates: (a) Plaintiff Perla Marin as the Class
26 Representative and (b) Larry W. Lee and Christine S. Lee of Diversity Law Group, P.C., Edward
27 W. Choi of the Law Offices of Choi & Associates, and William L. Marder of Polaris Law Group
28 as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with
respect to all acts or consents required by, or which may be given, pursuant to the Settlement

1 Agreement, and such other acts reasonably necessary to finalize the Settlement Agreement and
2 its terms. Any Class Member may enter an appearance through his or her own counsel at such
3 Class Member's own expense. Any Class Member who does not enter an appearance or appear
4 on his or her own behalf will be represented by Class Counsel.

5 5. The Court hereby approves the terms and conditions provided for in the
6 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
7 falls within the range of reasonableness of a settlement, including the amount of the PAGA
8 penalties, and appears to be presumptively valid, subject only to any objections that may be
9 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
10 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
11 Members when balanced against the probable outcome of further litigation relating to liability
12 and damages issues. It also appears that investigation, research, and court proceedings have been
13 conducted so that counsel for the Settling Parties are able to reasonably evaluate their respective
14 positions. It appears to the Court that settlement at this time will avoid substantial additional
15 costs by all Settling Parties, as well as avoid the delay and risks that would be presented by the
16 further prosecution of the Litigation. It also appears that settlement has been reached as a result
17 of intensive, serious, and non-collusive arm's-length negotiations.

18 6. A final fairness hearing on the question of whether the proposed Settlement
19 Agreement, the allocation of payments to Participating Class Members, attorneys' fees and costs
20 to Class Counsel, payment of PAGA penalties to the Labor Workforce & Development Agency,
21 and the Class Representative Service Award should be finally approved as fair, reasonable, and
22 adequate as to the members of the Class is hereby set for _____, at
23 _____ in this Court.

24 7. The Court hereby approves, as to form and content, the Notice of Proposed
25 Settlement of Class Action and Hearing Date for Final Court Approval ("Settlement Notice") to
26 be sent to Class Members, which is attached as **Exhibit A** to the Settlement Agreement. The
27 Court finds that distribution of the Settlement Notice substantially in the manner and form set
28 forth in the Settlement Agreement and this Order meets the requirements of due process and

1 shall constitute due and sufficient notice to all parties entitled thereto.

2 8. The Court appoints and designates Phoenix Settlement Administrators as the
3 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
4 approved Settlement Notice to Class Members using the procedures set forth in the Settlement
5 Agreement.

6 9. The Response Deadline as set forth in the Parties' Settlement Agreement shall be
7 extended to ninety (90) calendar days from the initial mailing of the Settlement Notice by the
8 Settlement Administrator, rather than the stated forty-five (45) calendar days.

9 10. Any Class Member may choose to opt out of and be excluded from the settlement
10 as provided in the Settlement Agreement and Notice Packet and by following the instructions for
11 requesting exclusion. With the exception of the PAGA Released Claims, any person who timely
12 and properly opts out of the settlement will not be bound by the Settlement Agreement, or have
13 any right to object, appeal, or comment thereon. Any opt out request must be in writing and
14 signed by each such Class Member opting out and must otherwise comply with the requirements
15 delineated in the Settlement Notice. Class Members who have not requested exclusion by
16 submitting a valid and timely opt out request, by the opt out deadline, shall be bound by all
17 determinations of the Court, the Settlement Agreement, and Judgment.

18 11. Any Class Member may object to the Settlement Agreement or express his or her
19 views regarding the Settlement Agreement and may present evidence and file briefs or other
20 papers that may be proper and relevant to the issues to be heard and determined by the Court as
21 provided in the Settlement Notice.

22 12. The Motion for Final Approval shall be filed by the Class Representative. All
23 moving papers shall be filed in compliance with the deadlines set forth in California Code of
24 Civil Procedure § 1005(b).

25 13. The Court reserves the right to adjourn or continue the date of the Settlement
26 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
27 the Class, and retains jurisdiction to consider all further applications arising out of or connected
28 with the Settlement Agreement.

1 IT IS SO ORDERED.

2
3 DATED: _____

4 HON. EDDIE C. STURGEON
5 SUPERIOR COURT OF CALIFORNIA
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EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]