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Attorneys for Plaintiff PATRICIA SOTO, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

PATRICIA SOTO, in a Representative capacity only, and on behalf of other members of the general public similarly situated

Plaintiff

v.

NOBLE HOUSE HOTELS & RESORTS. L.P., a Texas Limited Partnership; NOBLE HOUSE SHELTER POINTE, LLC, a Delaware Limited Liability Company; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2022-00034592-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S *MOTION*
RE: UNOPPOSED PAGA APPROVAL**

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: C- 68

Judge: Hon. Richard S. Whitney

1 I, Eric K. Yaeckel declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for PATRICIA SOTO, in a Representative capacity only, and on behalf of other
5 members of the general public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed *Ex Parte* Application Re: PAGA
7 Settlement Approval. I am personally familiar with the facts set forth in this declaration and,
8 if called to testify, could and would do so.
- 9 3. This is a Labor Code §2698 *et seq.* "Wage and Hour" ("PAGA") action brought against
10 Defendants NOBLE HOUSE HOTELS & RESORTS. L.P., and NOBLE HOUSE SHELTER
11 POINTE, LLC, ("NOBLE"). As this is a "PAGA" action only, the Limitations Period begins
12 on June 18, 2021. Defendant's employment records confirm here are approximately **490** PAGA
13 Members at issue.
- 14 4. Following the exchange of discovery, analysis of numerous sets of time and wage data, and
15 mediation held on November 28, 2023 with mediator Steve Pearl, Esq., the Parties reached a
16 proposed settlement that includes a payment of penalties to the LWDA.
- 17 5. On **November 28, 2023**, the Parties participated in an all-day mediation presided over by Steve
18 Pearl, Esq.. The case did not settle that day, but direct negotiations between the parties
19 eventually led to this Agreement and to settle the action.
- 20 6. On **May 2, 2024**, Plaintiff, uploaded via the LWDA's electronic filing portal, all of the
21 proposed settlement terms, including the PAGA allocations.
- 22 7. On **June 3, 2024**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies
23 of this entire *ex parte* application, including the Notice, this supporting Memorandum,
24 Declaration, and Proposed Order & Judgment.
- 25 8. The Total Value of the proposed Settlement is **\$204,000** which is broken down as follows:
- 26 * **\$70,000** Attorneys' Fees
- 27 * **\$13,000.00** Costs of Litigation.
- 28 * **\$6,250.00** Administration Expenses

Declaration of Eric K. Yaeckel

- * **\$30,000.00** (\$3,000 rep enhancement + \$27,000 individual 1542 release)
- * Sub-Total of **\$84,750.00** 75% (**\$63,562.50**) shall be assigned/paid to the LWDA as penalties.
- * The remaining 25% (**\$21,187.50**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **\$43.24**.

9. A true and correct copy of the parties Settlement Agreement is attached as **Exhibit 1**. There are no restrictions for any of the **454** employees to file individual actions, as the settlement agreement only covers PAGA claims. (See section III(5).)
10. The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period “cutoff date” is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; **(2)** Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may change their mailing address without filing a proper “forwarding address”).
11. An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The “fixes” provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendants the opportunity to move on, and focus on future business.
12. Plaintiff alleges that she - and other employees - received “short,” “late,” or “missing” Meal Periods, including those documented within Defendant’s Time Records. (Decl. Yaeckel, ¶12). Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged she- and other employees -were not properly compensated due to Defendant’s failure to maintain accurate time records. Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies.
13. The catalyst of this litigation concerned allegations that Ms. Soto was denied legally compliant meal and rest periods, and was not paid for all Overtime hours worked.
14. Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies

- and employee records were not in compliance with California law. However, these investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the law.
15. Based on the above, the maximum liability in a case of this type would be in the range of **\$250,000.00** to **\$350,000.00**. However, without revealing settlement protected communications, it was highly unlikely Plaintiff could ever recover anything approaching a maximum judgment.
16. Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). To confirm, Plaintiff’s counsel experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per violation), due to the efforts made by the employer to comply with the law.
17. Plaintiff’s counsel agrees with Her Honor, and with the provision of the Labor Code, that penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code.
18. As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant has agreed to review its policies, and amend them to the extent they do not comply with California law.
19. Plaintiffs’ counsel, William B. Sullivan has approximately 29 years of experience in “class action” litigation, both as plaintiff and defense counsel. Plaintiff’s counsel, Eric K. Yaeckel, has over 13 years of experience prosecuting class and representative action claims under the California Labor Code. Plaintiff’s counsel, Eric K. Yaeckel and William B. Sullivan, are the attorneys of record in a matter that was recently heard (and favorably decided) before the California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. The *Donohue* matter was a certified class and PAGA action.
20. Plaintiff’s counsel were lead counsel on approximately 40 employment “wage and hour” claims with class action, or representative action allegations. Based on said experience, it is

- 1 the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment.
- 2 21. Defendant, and its counsel, deserve credit for their willingness to consider - and address - the
- 3 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in
- 4 "Wage and Hour" litigation) agreed to produce a substantial amount of documents and
- 5 information necessary to evaluate the parameters of settlement. Following the a full day
- 6 Mediation and arms-length negotiations, the parties have reached a proposed settlement that
- 7 includes a payment of penalties under PAGA.
- 8 22. The parties seek to allocate **\$84,750.00** of the total settlement to the Total Value of the PAGA
- 9 Fund. 75% (**\$63,562.50**) shall be assigned/paid to the LWDA as penalties. The remaining 25%
- 10 (**\$21,187.50**) will be allocated and distributed among the current or ex-employees within the
- 11 PAGA Period.
- 12 23. The parties contend the settlement agreement amount is fair, adequate, and reasonable. The
- 13 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's
- 14 operative Complaint.
- 15 24. To date, Plaintiff has not received a response from the LWDA regarding the proposed
- 16 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the October 26, 2023
- 17 hearing, Plaintiff's counsel will provide an updated declaration to the Court.
- 18

19 I declare under penalty of perjury under the laws of the State of California that the foregoing

20 is true and correct. Executed this 3rd day of June, 2023 at San Diego, California.

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22 Eric K. Yaeckel

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EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement” or “Agreement”) is made and entered into between PATRICIA SOTO (“Plaintiff”), acting in a Private Attorney General capacity, and NOBLE HOUSE SHELTER POINTE, LLC and NOBLE HOUSE HOTELS & RESORTS, L.P. (collectively “Defendants”).

I. DEFINITIONS

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

1. “Action” means the matter entitled *Soto v. Noble House Hotels & Resorts, L.P.*, San Diego County Superior Court, Case No. 37-2022-00034592-CU-OE-CTL, filed on or about August 22, 2022.

2. “Aggrieved Employees” consists of all persons within the State of California who are or were employed by Noble House Shelter Pointe, LLC as non-exempt employees in the State of California from June 18, 2021, through the Effective Date (defined below).

3. “Complaint” means the Representative Action Complaint entitled *Soto v. Noble House Hotels & Resorts, L.P.*, San Diego County Superior Court, Case No. 37-2022-00034592-CU-OE-CTL, filed on or about August 22, 2022.

4. “Court” means the Superior Court of California for the County of San Diego.

5. “Effective Date” means the date upon entry of an Order by the Court approving this Settlement.

6. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

7. “LWDA” means the California Labor and Workforce Development Agency.

8. “Gross Settlement Amount” is the non-reversionary sum of One Hundred and Seventy-Seven Thousand Dollars and No Cents (\$177,000.00), which represents the total amount payable under this Settlement by Defendants, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s Counsel’s fees and costs, payment to the Settlement Administrator for administration costs, and an enhancement award to Plaintiff.

9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Counsel’s fees up to Seventy Thousand Dollars and No Cents (\$70,000.00); (b) Plaintiff’s verified costs up to Thirteen Thousand Dollars and No Cents (\$13,000.00); (c) administration costs up to Six Thousand Two Hundred and Fifty Dollars and No Cents (\$6,250.00); and an enhancement award to Plaintiff not to exceed Three Thousand Dollars and Zero Cents (\$3,000.00).

10. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

11. “PAGA Period” means the time period from June 18, 2021 through the Effective Date.

12. “Released Parties” means Defendants Noble House Shelter Pointe, LLC and Noble House Hotels & Resorts, L.P., and all persons, agents, servants, representatives, officers, directors, stockholders, employees, associations, joint ventures, corporations, parent corporations, subsidiaries, affiliates, partners, members, predecessors and successors in interest, insurers, re-insurers, and assigns, and all other legal entities with whom Defendants have been, are now, or may hereafter be affiliated with.

13. “PAGA Released Claims” mean any and all claims relating to any and all facts and claims asserted or that could have been asserted in the Action or any other claims, under PAGA, based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: meal and rest breaks; minimum wages, overtime and double time wages (including, but not limited to, any and all theories related to “off the clock work” or incorrect calculation of the “regular rate of pay”); expense reimbursement; late payment of wages; failure to properly record and maintain employment records; waiting time penalties; meal and rest period penalties; wage statement violations; and separation pay violations.

14. “Parties” mean Plaintiff and Defendants.

15. “Plaintiff’s Counsel” means Sullivan & Yaeckel Law Group, APC.

16. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

II. RECITALS

1. Plaintiff alleges that Defendants committed violations of the California Labor Code governing: meal and rest breaks; minimum wages, overtime and double time wages (including, but not limited to, any and all theories related to “off the clock work” or incorrect calculation of the “regular rate of pay”); expense reimbursement; late payment of wages; failure to properly record and maintain employment records; waiting time penalties; meal and rest period premiums; wage statement violations; and separation pay violations, and, as a result of the foregoing, Plaintiff alleges that Defendants are liable for civil penalties under PAGA.

2. On February 15, 2022, Plaintiff provided written notice to the LWDA and Defendants asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described above.

3. On August 22, 2022, Plaintiff filed the operative complaint in the Action.

4. The Parties engaged in formal as well as additional informal discovery exchange prior to mediation. In response to Plaintiff’s Counsel’s informal discovery requests, Defendants provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff’s Counsel to investigate Plaintiff’s allegations and value the PAGA claim.

5. On November 28, 2023, the Parties participated in mediation before mediator Steve Pearl. With the assistance of Mr. Pearl, the Parties agreed to fully and finally resolve, subject to Court approval, the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

6. Defendants have entered into separate, confidential settlement agreements regarding individual, non-PAGA claims ("Individual Settlement Agreements"). In the Individual Settlement Agreements, Plaintiff expressly waives and relinquishes, among other things, the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code. The Individual Settlement Agreement is contingent on Court approval of this Agreement, and this Agreement is contingent on execution and compliance with the Individual Settlement Agreements.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendants of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and Defendants specifically disclaim any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendants shall pay One Hundred and Seventy-Seven Thousand Dollars and No Cents (\$177,000.00) as the non-reversionary Gross Settlement Amount. Defendants will not pay more than the Gross Settlement Amount. Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator within twenty-one (21) calendar days after the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Counsel's Fees and Costs.** Defendants will not oppose Plaintiff's request for attorneys' fees in the amount up to Seventy Thousand Dollars and No Cents (\$70,000.00) and costs incurred in prosecuting this Action in the amount up to Thirteen Thousand Dollars and No Cents (\$13,000.00). In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the attorneys' fees and/or costs should be reduced, the other terms of this Settlement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. Defendants, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Enhancement Award to Plaintiff.** Defendants will not oppose a request for an enhancement award to Plaintiff not to exceed Three Thousand Dollars and Zero Cents (\$3,000.00). If Plaintiff's counsel's request is not approved and/or reduced by the Court, any amount not requested and/or not approved and/or reduced by the Court will increase the Net

Settlement by that amount. Defendants, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. Defendants will not oppose the Settlement Administrator's costs in the amount up to Six Thousand Two Hundred and Fifty Dollars and No Cents (\$6,250.00) for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Defendant, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

4. Allocation of Net Settlement Amount. The Net Settlement Amount shall be distributed pursuant to Lab. Code § 2699(i) as follows:

a. 75% of the Net Settlement Amount shall be distributed to the LWDA.

b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the Settlement.

5. Representative PAGA Release. In their capacity as Private Attorney Generals or "aggrieved employees" acting on behalf of themselves, the State of California and Aggrieved Employees, Plaintiff hereby releases Defendants and Released Parties from any and all of the PAGA Released Claims that arose during the PAGA Period.

6. PAGA Released Claims. Plaintiff agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. Plaintiff's General Release. Plaintiff personally agrees to release, in addition to the PAGA Released Claims, all claims, whether known or unknown, under federal law or state law, to the fullest extent permitted by law, against the Released Parties. Plaintiff further understands that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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.

Notwithstanding the above nor anything else in this Agreement, this waiver and release does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not

limited to, workers' compensation claims; (ii) rights or claims arising out of this Agreement after the date this Agreement is executed by Plaintiff; and (iii) rights or claims arising out of this Agreement. The Agreement in no way affects Plaintiff's entitlement and/or benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation.

8. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement

9. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that she has read this Settlement, that she fully understands her rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that she had the opportunity to consult with her attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

10. **Escalator Clause.** Defendants represent that, based on data from September 2023, there were approximately 454 employees in the PAGA Group. If, as of November 28, 2023, the number of employees in the PAGA Group exceeds 454 by more than ten percent, Defendants shall increase the Total Settlement Amount proportionally (i.e., for an increase of eleven percent in employees, Defendants shall add an extra 1% to the Total Settlement Amount; for a fifteen percent increase in employees, Defendants shall add an extra 4% to the Total Settlement Amount).

11. **Confidentiality.** Except as provided below, to the extent necessary to effectuate the Settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media or otherwise publicize the Settlement or communicate its terms (including the amount) in public or in private, other than as necessary to obtain Court approval of this Settlement and/or unless otherwise ordered by the Court or required by law. The Parties and Plaintiff's Counsel agree that they will not initiate or have contact with the press, respond to any press inquiry, or have any communication with the press about the Action. In response to any inquiries, Plaintiff will state the following: "The case was resolved, and it was resolved confidentially." Notwithstanding the above, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the PAGA Payment, as required by Labor Code Section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties seeking Court approval of the Settlement, pursuant to Lab. Code § 2699(1)(2).

12. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

13. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within fourteen (14) calendar days after the Effective Date, Defendants shall provide the Settlement Administrator with information for Aggrieved Employees. Defendants will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, total pay periods worked during the PAGA Period and/or dates of employment, and Social Security number. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within seven (7) business days of receiving the Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within two (2) business days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.4., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA

Payment along with an explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing.

Defendants fully discharge their obligations to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued.

5. **Payment of Remainder.** Within two (2) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; and (3) the Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendants, nor counsel for the Parties, make any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendants shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

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

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

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of San Diego.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect will be null and void, and the Parties will be returned to their original respective positions unless otherwise required under this Agreement.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

9. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed

counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arms-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms under California Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

18. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. Nothing in this Settlement, nor any action taken in implementation thereof, nor any

statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

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

Dated: 5/24/24, 7:46 PM _____



Patricia Soto, Plaintiff

Dated: _____

Noble House Shelter Pointe, LLC, Defendant

By: _____

Its: _____

Dated: _____

Noble House Hotels & Resorts, L.P., Defendant

By: _____

Its: _____

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

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

Dated: _____

Patricia Soto, Plaintiff

Dated: 05/31/2024



Noble House Shelter Pointe, LLC, Defendant

By: Gabriel Rosenthal

Its: General Counsel

Dated: 05/31/2024



Noble House Hotels & Resorts, L.P., Defendant

By: Gabriel Rosenthal

Its: General Counsel

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Soto v. Noble House Hotels & Resorts, L.P.,
Superior Court of the State of California for the County of San Diego
Case No. 37-2022-00034592-CU-OE-CTL

[Settlement Administrator]

[Name]

[Address]

[Name]

[Address]

You are receiving this Notice because of a lawsuit brought by Patricia Soto (“Plaintiff”), against Noble House Shelter Pointe, LLC and Noble House Hotels & Resorts, L.P. (“Defendants”), for civil penalties pursuant to the Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”).

Defendants strongly deny these claims and deny that they owe any penalties. To avoid further time and expense in litigation, Defendants and Plaintiff have agreed to settle the case. The settlement resolves and releases all the claims that were asserted in the lawsuit on behalf of all non-exempt employees who worked in California for Noble House Shelter Pointe, LLC any time during the period from June 18, 2021, to [DATE OF SETTLEMENT APPROVAL] (“PAGA Member”).

According to Noble House Shelter Pointe, LLC’s records, you are a PAGA Member and are therefore entitled to a share of the settlement. Enclosed with this Notice is your settlement check. The settlement check shall remain valid for one hundred eighty (180) days. Checks remaining un-cashed for more than 180 days after issuance will be tendered to the California Department of Unclaimed Property.