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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ORANGE

CANDICE RICHARD, a proxy for the State
 of California as an aggrieved employee
 pursuant to the Private Attorneys General
 Act ("PAGA"),

Plaintiff,

vs.

DIMENSION DEVELOPMENT
 COMPANY, INC., G&B HOTEL
 EMPLOYEE LEASING LLC, and DOES 1
 through 10, inclusive,

Defendants.

Case No.: 30-2022-01261804-CU-OE-CXC

Assigned for all purposes to Hon. Randall J.
 Sherman

ENFORCEMENT ACTION UNDER THE
 PRIVATE ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE §§ 2698 ET
 SEQ.

**JOINT STIPULATION RE PAGA
 SETTLEMENT AND RELEASE**

Complaint Filed: May 23, 2022
 Trial Date: None Yet Set

JOINT STIPULATION RE PAGA SETTLEMENT

This Settlement and Release Agreement is made and entered into by and between Representative Plaintiff Candice Richard (“Plaintiff”) individually and on behalf of all PAGA Aggrieved Employees (as defined in Paragraph 14) and Defendants Dimension Development Company, Inc. and G&B Hotel Employee Leasing LLC (“Defendants” or “Dimension Development”) (Plaintiff and Defendants are referred to together as the “Parties”). The Parties agree that this action shall be settled on the terms and conditions set forth in this Joint Stipulation re PAGA Settlement and Release (“Settlement Agreement” or “Settlement”), subject to the approval of the Court pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”).

INTRODUCTION

1. On March 17, 2022, pursuant to PAGA, Plaintiff Richard provided notice, via online submission, to the State of California’s Labor and Workforce Development Agency (“LWDA”) regarding various alleged California Labor Code violations. The LWDA Notice bears number LWDA-CM-874013-22.

2. On May 23, 2022, Plaintiff filed this wage and hour Private Attorneys General Act (“PAGA”) action against Defendants alleging, among other things, failure to provide meal periods and rest periods, and underpayment of wages.¹

3. On August 5, 2022, Defendants filed a Motion to Dismiss Representative Private Attorneys General Act Claim and Compel Arbitration of Plaintiff’s Individual Claims, set for hearing on November 18, 2022. (ROA No. 20.)

¹ The complaint alleges violations of Labor Code sections: (1) 510 and 1198 (unpaid overtime); (2) 223, 1182.12, 1194, 1197, and 1197.1 (unpaid minimum wages); (3) 226.7, 512(a), and 1198 (failure to provide meal periods and/or pay meal premiums); (4) 226.7 and 1198 (failure to provide rest periods and/or pay rest period premiums); (5) 226(a) and 1198 (non-compliant wage statements); (6) 226 and 1198 (failure to provide the right to inspect and/or product Plaintiff’s employment records upon request); (7) 1174(d) and 1198 (failure to maintain accurate payroll records); (8) 1198 (failure to maintain accurate time records); (9) 204 (wages not timely paid during employment); (10) 201-203 (wages not timely paid on termination); (11) 1198 and 2810.5(a)(1) (failure to provide employees with written notice of information material to employment); (12) 226(c) and 1198.5 (failure to provide the right to inspect and/or produce Plaintiff’s employment records upon request within the required time frame); (13) 432.7 (failure to conduct compliant background checks); and (14) 351 (withholding portions of gratuities paid by patrons to employees).

4. On November 4, 2022, Plaintiff filed an opposition in which Plaintiff argued that the arbitration agreement at issue did not include a severability provision like the one in *Viking River*, and thus, the illegal PAGA waiver could not be severed. (ROA No. 35.)

5. On November 18, 2022, the Court denied Defendants' motion. (ROA No. 44.)

6. On May 2, 2023, the Parties participated in an all-day mediation with Joel Grossman. At the conclusion of the full day arm's-length mediation, the Parties agreed to the principal terms of the settlement, the terms of which are reflected in this Settlement Agreement.

7. Based on Plaintiff's investigations, discovery, records analyses, and taking into account the defenses that Defendants raised in connection with both liability on the merits and the amount of any civil penalty that might be imposed by the Court pursuant to Labor Code section 2699(e)(2), the expense and time necessary to pursue the Action through trial, the risks and costs of further prosecution of the Action, the uncertainties of complex litigation and developing law, and the benefits that will accrue to the State of California's LWDA and the Aggrieved Employees, Plaintiff and her counsel believe that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the State of California (i.e., LWDA), the Aggrieved Employees (as defined in Paragraph 14), and Plaintiff.

8. By entering into this Settlement Agreement, Defendants are not admitting any liability whatsoever, including that the imposition of any PAGA civil penalties in connection with the Action is proper or warranted, and Defendants maintain all defenses. The Parties have entered into this Settlement Agreement solely to avoid the expense, risk, and burden of continued litigation. The Parties agree that an express condition of this settlement is that there has been no finding of liability on the merits, and that this Settlement Agreement and ensuing judgment therefore cannot be a basis for a derivative finding that Defendants violated any provision of the Labor Code.

9. Defendants deny liability, and Plaintiff acknowledges that neither this Settlement Agreement nor promises made pursuant to the Settlement Agreement shall be taken or construed to be an admission or concession of any kind with respect to liability or alleged wrongdoing by Defendants.

11. The Parties stipulate to approval of the representative action for purposes of settlement only.

12. The Parties further agree to cooperate and to take all steps necessary and appropriate to effectuate all aspects of this Settlement.

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

13. “Action” means the action entitled *Candice Richard v. Dimension Development Company, Inc., et al.*, Orange County Superior Court Case No. 30-2022-01261804-CU-OE-CXC.

14. “Aggrieved Employees” means all current and former non-exempt hourly-paid employees who were employed by Defendants in California at any of the Hotel Properties at any time during the PAGA Period.

15. “Approval Order” means the order issued and entered by the Court following a Motion for Approval of this Settlement Agreement.

16. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Plaintiff’s Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Plaintiff’s Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, providing any notices required as

1 part of the Settlement or Court order, securing the Court's approval of the Settlement,
2 administering the Settlement, obtaining entry of the Judgment terminating the Action, and
3 expenses for any consultants or experts. Attorneys' Fees and Costs shall be paid to Plaintiff's
4 Counsel, the Law Offices of Mark Yablonovich as set forth below in Paragraph 40.a.i. The
5 Parties have agreed to, and Defendants do not intend to oppose, an application to the Court for
6 Attorneys' Fees in an amount of one-third (33 $\frac{1}{3}$ %) the Gross Settlement Amount, not to exceed
7 Two Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents
8 (\$216,666.66), and costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero
9 Cents (\$25,000.00).

10 17. "Complaint" means the operative complaint filed in the Action for civil penalties
11 for violations of California Labor Code, pursuant to the Private Attorneys General Act of 2004,
12 Labor Code sections 2698, et seq.

13 18. "Court" means the Superior Court of the State of California for the County of
14 Orange or any other court taking jurisdiction of the Action.

15 19. "Defendants" means Defendants Dimension Development Company, Inc, and
16 G&B Hotel Employee Leasing LLC.

17 20. "Defendants' Counsel" means Wilson, Elser, Moskowitz, Edelman & Dicker,
18 LLP. For purposes of providing any notices required under this Settlement, Defendants'
19 Counsel shall refer to: Diana M. Estrada, 555 South Flower Street, Suite 2900, Los Angeles, CA
20 90071.

21 21. "Employee List and Data" means a complete list and data of all Aggrieved
22 Employees that Defendants will provide to the Settlement Administrator in an electronic
23 database within seven calendar days after the Court approves this Settlement. The Employee
24 List and Data shall contain each Aggrieved Employee's full name, Social Security Number, last
25 known home address, and the number of Pay Periods each Aggrieved Employee worked at least
26 one shift as a non-exempt employee for Defendants in any of the Hotel Properties in California
27 during the PAGA Period.

28 22. "Effective Date" shall be the date the Court signs the Order for Approval of

1 Settlement under Labor Code section 2699 and Judgment by Court if no objection to the
2 settlement has been made before the Court's signing. If an objection to the settlement is made
3 before the Court signs the Order and Judgment, then the Effective Date is the date the objection
4 is resolved.

5 23. "Gross Settlement Amount" means the gross maximum settlement amount of Six
6 Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00), to be paid by Defendants in full
7 satisfaction of all Released Claims arising from the Action, which include all Individual
8 Settlement Payments to Aggrieved Employees, the Labor and Workforce Development Agency
9 Payment, Attorneys' Fees and Costs to Plaintiff's Counsel, the Service Award Payment to
10 Plaintiff, and Settlement Administration Costs to the Settlement Administrator. In no event will
11 Defendants be liable for more than the Gross Settlement Amount except as otherwise explicitly
12 set forth in this Settlement Agreement. (*See, e.g.*, Paragraph 43.)

13 24. "Hotel Properties" include the following hotel properties owned and/or operated
14 by Defendants: (1) Courtyard Cypress; (2) Courtyard Santa Ana; (3) Courtyard Santa Clarita;
15 (4) Fairfield Santa Clarita; (5) Hampton Inn Clovis; (6) Hampton Inn Cypress; (7) Hampton Inn
16 San Diego; (8) Hampton Inn Santa Clarita; (9) Hilton Garden Inn Sacramento; (10) Homewood
17 Suites Agoura Hills; (11) Homewood Suites Clovis; (12) Homewood San Jose; (13) Residence
18 Inn San Diego; and (14) Residence Inn Santa Clarita.

19 25. "Individual Settlement Payment" means each Aggrieved Employee's share of the
20 Net PAGA Settlement Amount, to be distributed to the Aggrieved Employees.

21 26. "Labor and Workforce Development Agency Payment" or "LWDA Payment"
22 means the amount to be paid to the California Labor and Workforce Development Agency
23 ("LWDA") in connection with the PAGA (Cal. Lab. Code §§ 2698, et seq.). Seventy-five
24 percent (75%) of the Net PAGA Settlement Amount of civil penalties shall be payable to the
25 LWDA.

26 27. "Net PAGA Settlement Amount" means the portion of the Gross Settlement
27 Amount remaining after deduction of the approved Service Award Payment, Settlement
28 Administration Costs, and Plaintiff's Attorneys' Fees and Costs. Of the Net PAGA Settlement

Amount, seventy-five percent (75%) shall be distributed to the LWDA and twenty-five percent (25%) shall be distributed to the Aggrieved Employees ("PAGA Penalties").

28. "Notice" means the Notice of PAGA Settlement (in English and Spanish), substantially in the form attached as Exhibit A.

29. "PAGA Period" shall be from March 17, 2021 to May 2, 2023. The Release Period is the same as the PAGA Period.

30. "PAGA Distribution Fund" means the twenty-five percent (25%) of the Net PAGA Settlement Amount to be distributed to Aggrieved Employees.

31. "Parties" means Plaintiff and Defendants together.

32. "Pay Periods" means the number of pay periods of employment for each Aggrieved Employee during the PAGA Period in which the Aggrieved Employee received a paycheck. The Pay Periods shall not include any pay periods of employment during which an Aggrieved Employee worked outside the state of California, performed no work for Defendants, or performed work in a position that was not non-exempt. All Aggrieved Employees shall be credited with at least one Pay Period.

33. "Plaintiff's Counsel" means the Law Offices of Mark Yablonovich ("LOMY") on behalf of Plaintiff Candice Richard respectively, the State of California and Aggrieved Employees.

34. "Release Period" shall be from March 17, 2021 to May 2, 2023. The release period is the same as the PAGA Period.

35. "Released Claims" means all claims for PAGA civil penalties under the California Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7, 351, 432.5, 510, 512, 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2810.5, California Code of Regulations, Title 8, section 11050, all applicable IWC Wage Orders, and/or other provisions of law alleged to have been violated in the operative Complaint and Plaintiff's LWDA letter with respect to Aggrieved Employees and attorneys' fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had or may claim to have, against the Released Parties (as defined in Paragraph 36) arising out of the same facts in the Complaint

1 and Plaintiff's LWDA letter. Aggrieved Employees, other than Plaintiff, will not be deemed to
2 have released any private rights of action and/or individual wage and hour claims held by
3 Aggrieved Employees for any alleged violations of the Labor Code or California Wage Orders
4 during the PAGA Period by virtue of this Settlement.

5 36. "Released Parties" means Defendants, and Defendants' parents, subsidiaries,
6 affiliated corporations and entities, predecessors or successors, current and former officers,
7 directors, members, managers, employees, consultants, partners, shareholders, joint venturers,
8 franchisors, franchisees, and agents, as well as any successors, assigns, or legal
9 representatives/attorneys.

10 37. "Service Award Payment" or "PAGA Service Award Payment" means the
11 amount to be paid to Plaintiff Candice Richard in recognition of her efforts and work in
12 prosecuting the Action on behalf of Aggrieved Employees and the State of California, and in
13 exchange for her general release of all claims. The Service Award Payment is separate and apart
14 from any Individual Settlement Payment that Plaintiff is entitled to as an Aggrieved Employee.
15 Defendants do intend to oppose Plaintiff's applications to the Court for a Service Award
16 Payment not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00).

17 38. "Settlement Administrator" means the third-party administrator, Atticus
18 Administration, LLC or any other duly appointed administrator approved by the Court, who has
19 been mutually selected by the Parties, subject to Court approval, to perform the notice,
20 distribution of payment functions further described in this Settlement. The Settlement
21 Administrator shall establish its own employer identification number and file an Internal
22 Revenue Service Form W-9. The Settlement Administrator shall meet all of the requirements to
23 establish a Qualified Settlement Fund ("QSF") pursuant to U.S. Treasury Regulation Section
24 468B-1.

25 39. "Settlement Administration Costs" means the costs payable from the Settlement
26 Amount to the Settlement Administrator for administering this Settlement, including, but not
27 limited to, printing, distributing, and tracking documents for this Settlement, translating the
28 Notice to Spanish, calculating estimated amounts per Aggrieved Employee, distributing

postcards, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, and other duties and responsibilities set forth in this Settlement Agreement to process this Settlement, and as reasonably requested by the Parties or the Court. All of the costs, fees and expenses incurred by the Settlement Administrator in performing these functions shall be paid and deductible from the Gross Settlement Amount. The Settlement Administration Costs are estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00).

TERMS OF SETTLEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, and warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

40. It is agreed by and between Plaintiff and Defendants that the Action and any claims and causes of action which were or are the subject of the Actions be fully settled and compromised as between Plaintiff, on behalf of herself, the State of California (the LWDA), and each and every Aggrieved Employee, and Defendants and the Released Parties (as defined in Paragraph 36 above), subject to the terms and conditions set forth in this Settlement Agreement and the approval of the Court.

a. **Consideration:** In consideration for this Settlement Agreement, Defendants agree to pay up to the Gross Settlement Amount of Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00) to cover Individual Settlement Payments to Aggrieved Employees, the Labor and Workforce Development Agency Payment, Attorneys' Fees and Costs to Plaintiff's Counsel, the Service Award Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator. This Settlement is non-reversionary. Defendants maintain no reversionary right to any portion of the Settlement Amount. The Gross Settlement Amount shall be distributed as follows:

i. Attorneys' Fees and Costs.

1. Counsel for Plaintiff and the State of California (LOMY) shall be paid and receive an amount not to exceed one-third (33⅓%) of the Gross Settlement Amount (Two Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents

1 (\$216,666.66)) as reasonable attorneys' fees under PAGA;

2 2. Counsel for Plaintiff and the State of California (LOMY)
3 shall be paid and receive as reasonable reimbursable costs under PAGA an amount not to
4 exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to be distributed to LOMY;

5 3. The Settlement Administrator shall issue an Internal
6 Revenue Service Form 1099 to Plaintiff's Counsel for any attorneys' fees and costs award
7 payments. Plaintiff's Counsel shall be solely and legally responsible for paying all applicable
8 taxes on each firm's respective attorneys' fees and costs award payments;

9 4. Upon delivery of the Gross Settlement Amount to the
10 Settlement Administrator, Defendants will have fully met their obligations under this
11 Agreement as to attorneys' fees and costs and will not be liable in any manner for the
12 distribution, division, or payment of any portion of the Gross Settlement Amount to or between
13 any counsel of Plaintiff;

14 ii. **Settlement Administration Costs.** The actual costs of
15 administration, up to a maximum payment of Eight Thousand Dollars and Zero Cents
16 (\$8,000.00), shall be paid to the Settlement Administrator. The Settlement Administration Costs
17 approved by the Court will be paid from the Gross Settlement Amount. Any amount not
18 awarded to the administrator shall be included in the Net PAGA Settlement Amount. Upon
19 completion of administration of the settlement set forth in this Agreement, the Settlement
20 Administrator shall provide written certification of such completion to Plaintiff's Counsel and
21 Defendants' Counsel;

22 iii. **Service Award Payment.** Representative Plaintiff Candice
23 Richard shall receive not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) from
24 the Gross Settlement Amount, as a PAGA service award (any amount not awarded to Plaintiff
25 shall be included in the Net PAGA Settlement Amount);

26 1. The Settlement Administrator shall issue an Internal
27 Revenue Service Form 1099 to Plaintiff for the Service Award Payment. Plaintiff shall be solely
28 and legally responsible for paying all applicable taxes on her Service Award Payment; and

iv. **LWDA Payment.** The remainder of the Gross Settlement Amount, once the amounts above have been deducted (the “Net PAGA Settlement Amount”), approximately Three Hundred Ninety Thousand Three Hundred Thirty-Three Dollars and Thirty-Four Cents (\$390,333.34), will be distributed as required by Labor Code section 2699(i), and in accordance with the terms of this Settlement Agreement, subject to the Court’s approval, as follows:

1. Seventy-five percent (75%), approximately Two Hundred Ninety-Two Thousand Seven Hundred Fifty Dollars and One Cent (\$292,750.01), shall be paid to and received by the LWDA, to settle the claims for PAGA penalties based on the alleged violations of the Labor Code as asserted in the Action; and

2. Twenty-five percent (25%), approximately Ninety Seven Thousand Five Hundred Eighty-Three Dollars and Thirty-Four Cents (\$97,583.34), shall be paid to and received by the Aggrieved Employees on a pro rata basis according to each Aggrieved Employee’s individual number of Pay Periods;

v. **Individual Settlement Payments.** Each Aggrieved Employee will be eligible to receive a portion of the PAGA Distribution Fund based on the following formula:

1. The Individual Settlement Payment to an Aggrieved Employee will be calculated by dividing the number of Pay Periods attributed to the Aggrieved Employee during the PAGA Period by all Pay Periods during the PAGA Period attributed to all Aggrieved Employees multiplied by the PAGA Distribution Fund. Otherwise stated, the formula for an Aggrieved Employee’s Individual Settlement Payment is: (individual’s Pay Periods during the PAGA Period ÷ total Pay Periods during the PAGA Period) × PAGA Distribution Fund;

2. At mediation, the Gross Settlement Amount was calculated based on the understanding that there are 16,059 pay periods worked by Aggrieved Employees between March 17, 2021 and May 2, 2023. The Parties agree that Defendants will not be required to make any payment in excess of the Gross Settlement Amount if, at the time

1 the Court approves the Settlement, the number of Pay Periods during the period of March 17,
2 2021 and May 2, 2023, is not greater than 16,861 (i.e., 5% over the 16,059 pay period count). If
3 the number of Pay Periods worked by the Aggrieved Employees during the PAGA Period is
4 greater than 16,861, then the Gross Settlement Amount shall be increased proportionately for
5 each additional Pay Period worked above 16,861 as detailed in Paragraph 43;

6 3. Defendants' time and payroll records regarding the
7 number of Pay Periods worked for each Aggrieved Employee shall be used for purposes of
8 calculating Individual Settlement Payments. Defendants' records shall be determinative for
9 purposes of calculating the number of pay periods and any Individual Settlement Payments
10 made to Aggrieved Employees;

11 4. Any settlement checks distributing Individual Settlement
12 Payments returned to the Settlement Administrator as undeliverable with a forwarding address
13 provided on the returned envelope shall be sent within 5 calendar days via First Class U.S. Mail
14 to the forwarding address. If no forwarding address is provided, the Settlement Administrator
15 shall attempt to determine the correct address using a computer skip-trace search, and it shall
16 then perform a re-mailing within 10 calendar days;

17 b. **Notice to Aggrieved Employees.** Aggrieved Employees will receive the
18 Notice attached as Exhibit A along with their settlement checks. Settlement checks mailed out to
19 Aggrieved Employees shall be valid for One Hundred and Eighty (180) days from the date of
20 issuance. Ninety days after the checks are mailed, the Settlement Administrator will mail
21 reminder postcards to Aggrieved Employees whose checks remain uncashed. Funds represented
22 by settlement checks returned as undeliverable and those settlement checks remaining uncashed
23 for more than One Hundred and Eighty days after issuance shall be voided and then shall be
24 paid out to the California Controller's Unclaimed Property Fund in the name of the Aggrieved
25 Party.

26 c. **Tax Treatment of the Aggrieved Employee Payments.** The entirety of
27 PAGA Penalties paid to individual Aggrieved Employees shall be considered miscellaneous
28 income and shall not be subject to withholdings. The Settlement Administrator shall be

1 responsible for timely issuing an appropriate IRS Form 1099 to each Aggrieved Employee.

2 d. **Costs of Settlement Administrator.** The Settlement Administrator has
3 agreed to perform all necessary administration duties for no more than Eight Thousand Dollars
4 and Zero Cents (\$8,000.00). These administration duties shall include, without limitation, the
5 translation of the Notice, the calculation, processing, and mailing of all settlement checks, tax
6 forms, and notices to all Aggrieved Employees, the LWDA, Plaintiff's Counsel and any tax
7 authorities, performing address updates and verifications as necessary prior to the mailing, and
8 performing an address follow up on any returned mail. The Settlement Administrator will also
9 be responsible for establishing a qualified settlement fund ("QSF"). All administration costs
10 approved by the Court shall be paid out of the Gross Settlement Amount. If the actual costs of
11 administration are less than Eight Thousand Dollars and Zero Cents (\$8,000.00), the difference
12 shall be reallocated by the Settlement Administrator to the Net PAGA Settlement Amount.

13 e. **Funding the Settlement and Timing of Payment.** Defendants shall
14 make a one-time deposit of the Gross Settlement Amount of Six Hundred Fifty Thousand
15 Dollars and Zero Cents (\$650,000.00) into a Qualified Settlement Account (to be established by
16 the Settlement Administrator) within seven days of the Effective Date. Within fourteen days of
17 the deposit, the Settlement Administrator will issue payments to: (a) the Aggrieved Employees,
18 along with the Notice; (b) the LWDA; (c) Plaintiff; (d) Plaintiff's counsel; and (e) itself.

19 f. Within ten calendar days after either (1) the Settlement is approved or (2)
20 entry of order denying the Settlement if the Court does not approve the Settlement, Plaintiff's
21 Counsel will provide a copy of the superior court's judgment, order, or both (if there is both an
22 order and judgment) to the LWDA pursuant to Labor Code section 2698(d)(3). In addition,
23 concurrent with the filing for approval of the Settlement Agreement, Plaintiff's Counsel shall
24 also take all necessary steps to inform the LWDA of the Settlement Agreement.

25 41. **No ERISA Impact.** None of the payments made pursuant to the Settlement
26 Agreement shall be considered for purposes of determining eligibility for, vesting or
27 participation in, or contributions to any benefit plan, including, without limitation, all plans
28 subject to the Employee Retirement and Income Security Act of 1974 ("ERISA"). Any

distribution of payments to Plaintiff or PAGA Aggrieved Employees shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any benefit plan sponsored or contributed to by Defendants or any jointly-trusted benefit plan. For purposes of this Settlement, "benefit plan" means each and every "employee benefit plan," as defined in 29 U.S.C. § 1002(3), and, even if not included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

42. **Non-Approval of the Settlement Agreement.** If the Court should, for any reason, not approve of any material portion of the settlement as set forth in this Settlement Agreement, then this Settlement Agreement shall be considered null and void, and neither this Settlement Agreement, nor any of the related negotiations or proceedings shall be of any force or effect and shall be inadmissible for any purpose in any proceeding, and all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court, unless the Parties jointly agree to seek reconsideration of the ruling or Court approval of a renegotiated settlement. If not approved, Defendants retain the right to contest whether any aspect of the Action should be maintained as a representative action, or to contest the merits of the claims being asserted in the Action. Invalidation of any material portion of this Settlement Agreement shall invalidate this Settlement Agreement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Settlement Agreement are to remain in full force and effect. As of the execution of this Agreement, the five-year statute of limitations set forth in California Code of Civil Procedure section 583.310 is tolled, and all pending deadlines to bring motions to compel discovery are tolled until sixty days after a court order approving or disapproving this Settlement Agreement.

1 43. **Proportional Increase to Gross Settlement Amount.** The Gross Settlement
2 Amount was calculated based on the understanding that there are 16,059 pay periods in the
3 PAGA Period worked by Aggrieved Employees. If the number of pay periods worked by the
4 Aggrieved Employees during the PAGA Period is greater than 5% of 16,059, then the Gross
5 Settlement Amount shall be increased proportionately for each additional pay period worked
6 above 16,861 (i.e., 5% over the 16,059 pay period count).

7 44. **Taxes.** Plaintiff, Defendants, and their respective counsel make no
8 representations as to the tax consequences or characterization of the nature of any payment
9 made pursuant to this Settlement Agreement.

10 45. **Circular 230 Disclaimer:** EACH PARTY TO THIS AGREEMENT
11 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT,
12 AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE
13 PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO
14 BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
15 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
16 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
17 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
18 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR
19 ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
20 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
22 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
23 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
24 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
25 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
26 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
27 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
28 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF
2 ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
3 AGREEMENT.

4 46. **Attorneys' Fees and Costs.** Except as provided in Paragraph 40.a.i. above,
5 Plaintiff, on the one hand, and Defendants, on the other, each agree to bear their own costs and
6 attorneys' fees and waive any statute, rule of court, provision or legal proposition which might
7 otherwise be relied upon to obtain costs, fees or expenses in connection with Plaintiff's
8 allegations and causes of action released in this Settlement Agreement. Plaintiff's Counsel
9 acknowledges that if this settlement is approved they will have no claim for or legal right to
10 attorneys' fees or costs except as provided for in this Settlement Agreement. For purposes of the
11 approval of Attorneys' Fees and Costs and/or the Approval of this Settlement, Defendants will
12 not oppose Plaintiff's Counsels' argument that the Actions were a catalyst for policy changes
13 that occurred during the pendency of the Action. The Settlement Administrator (and not
14 Defendant) shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded
15 attorneys' fees and costs.

16 47. **Release of Claims by the State and Aggrieved Employees.** Upon the approval
17 by the Court of this Settlement Agreement, and except as to such rights or claims as may be
18 created by this Settlement Agreement, the State of California and each and every Aggrieved
19 Employee (which includes any legal heirs and/or successors-in-interest of each and every
20 Aggrieved Employee), fully releases and discharges the Released Parties from the Released
21 Claims during the Release Period (which is also the PAGA Period). Aggrieved Employees will
22 not be deemed to have released any individual wage and hour claims based on alleged violations
23 of the Labor Code or of a California Wage Order, for which they have a private right of action,
24 by virtue of this Settlement Agreement during the Release Period.

25 48. **Complete And General Release of Claims by Plaintiff Candice Richard.** In
26 consideration for receiving the Service Award Payment described above, Plaintiff binds herself,
27 and all of her respective heirs, beneficiaries, trustees, administrators, executors, assigns, agents
28 and legal representatives, and releases, waives and forever discharges Defendants and the

Released Parties from, and acknowledges full accord and satisfaction of, any and all claims, demands, causes of action, rights, and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law or statutory, under federal, state or local law or otherwise) by reason of any act, omission, transaction, agreement or occurrence, that she has ever had, now has against Defendants and the Released Parties up to and including the date the Court approves this Settlement (“Plaintiff’s Released Claims”) arising under federal, state or local laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have been asserted by Plaintiff, or their heirs, successors and/or assigns of Plaintiff. Notwithstanding any other provision of this Settlement Agreement, this general release does not release any claims that cannot lawfully be released. This general release is not intended to limit Plaintiff from filing a charge with, or participating in an investigation conducted by, the Equal Employment Opportunity Commission; provided, however, that Plaintiff expressly waives and relinquishes any rights she might have to recover damages, monetary or other relief, whether equitable or legal, in any such proceeding concerning events or actions that arose on or before the date that they sign this Settlement Agreement. Plaintiff is not waiving any rights she may have to (i) Plaintiff’s own vested accrued employee benefits under any health, welfare, or retirement benefits plans as of the date of execution of this Settlement Agreement; (ii) any benefits or rights to seek benefits under applicable workers’ compensation (except as to claims under Labor Code sections 132a and 4553) or unemployment insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing this Settlement Agreement; (iv) enforce this Settlement Agreement; and (v) challenge the validity of this Settlement Agreement.

49. **Waiver of Unknown Claims by Plaintiff.** With respect to Plaintiff’s Complete and General Release, Plaintiff acknowledges the language of 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.

Plaintiff expressly waives the protection of Section 1542. This release excludes any release of any claims not permitted to be released by law.

50. **No Admission of Liability.** By entering into this Settlement, Defendants in no way admit any violation of law or any liability whatsoever to Aggrieved Employees, individually or collectively, and expressly deny all such liability.

51. Within seven calendar days after the Court's signature of the Order and Judgment, Defendants will compile and provide to the Settlement Administrator the Employee List. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service National Change of Address database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. Within fourteen (14) calendar days after receipt of the list of Aggrieved Employees, the deposit, and the Judgment or Order approving the Settlement, the Settlement Administrator will mail a settlement Notice (in the form attached as Exhibit A) and check to each Aggrieved Employee by first class mail. The Settlement Administrator will perform an address follow-up on returned mail, and will re-mail the Notice and check to an updated address (if any) within ten (10) calendar days of receipt of the returned mail. The Parties intend that reasonable, but not extraordinary, means are to be used to locate Aggrieved Employees. If no other address is found, no further action is required. If a current address for an Aggrieved Employee cannot be found by the Settlement Administrator, the Aggrieved Employee will nevertheless be bound by the terms of the Release in this Settlement Agreement, whether or not he or she receives actual notice from the Settlement Administrator.

52. The Settlement Administrator shall also be responsible for taking care of all required tax reporting and issuing IRS Form 1099s with the settlement payments. Upon

1 completion of its calculation of payments, the Settlement Administrator shall provide
2 Defendants' counsel with a report listing the amount of all payments made to each Aggrieved
3 Employee. Upon completion of its calculation of payments, the Settlement Administrator shall
4 provide Plaintiff's Counsel with a report listing only each Aggrieved Employee's (i) employee
5 ID or last four digits of the Aggrieved Employee's Social Security Number and (ii) individual
6 settlement payment. Plaintiff's Counsel shall not receive any identifying information, including
7 but not limited to names, addresses, and Social Security Numbers, for any of the Aggrieved
8 Employees, except for Plaintiff.

9 **53. Certification of Completion.** Upon completion of administration of the
10 Settlement, the Settlement Administrator shall provide a written declaration(s) under oath to
11 certify such completion to the Court and counsel for all Parties.

12 **SETTLEMENT APPROVAL PROCEDURE**

13 **54. Settlement Approval.** Plaintiff shall submit to the Court a Motion for Approval
14 of Settlement. This motion shall seek an order to approve the proposed Settlement. This motion
15 shall include the basis for the Gross Settlement Amount and why the amount is reasonable in
16 light of the facts and controlling authorities pertaining to the claims alleged. Pursuant to the
17 Court's requirements (J. Sherman), Plaintiff will concurrently submit the Motion for Approval
18 of PAGA Settlement to the LWDA.

19 **55. Entry of Judgment.** Upon issuance of the Approval Order, the Parties shall
20 request the Court enter Judgment in the case.

21 **ADDITIONAL PROVISIONS**

22 **56. Interim Stay of Proceedings.** Prior to the hearing on the Motion to Approve the
23 Settlement, the Parties agree to refrain from further litigation not in furtherance of this
24 Settlement Agreement, e.g., such proceedings necessary to implement and to obtain an
25 Approval Order of the terms of the Settlement. If the Settlement is not finally approved, the
26 Parties agree that they will revert to their positions in the lawsuit prior to the time the Settlement
27 was reached, and no agreements set forth in this Settlement or any documents generated or
28 orders issued related to the Settlement will be admissible in any future proceeding in this or any

1 other action.

2 57. **Construction.** The Parties agree that the terms and conditions of this Settlement
3 Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties,
4 and that this Settlement Agreement shall not be construed in favor of or against any Party by
5 reason of the extent to which any Party or any Party's counsel participated in the drafting of this
6 Settlement Agreement.

7 58. **Choice of Law.** This Settlement Agreement shall in all respects be interpreted,
8 enforced and governed by and under the laws of the State of California.

9 59. **Captions and Interpretations.** Paragraph titles or captions contained in this
10 Settlement Agreement are inserted as a matter of convenience and for reference only and in no
11 way define, limit, extend, or describe the scope of this Settlement Agreement or any provision
12 in this Settlement Agreement. Each term of this Settlement Agreement is contractual and not
13 merely a recital.

14 60. **Modification.** This Settlement Agreement may not be changed, altered, or
15 modified, except in a writing signed by counsel for all Parties. Any material changes,
16 alternations, or modifications to the provisions of this Settlement Agreement must be approved
17 by the Court. No rights under this Settlement may be waived except in writing.

18 61. **Integration Clause.** This Settlement Agreement contains the entire agreement
19 among the Parties relating to the settlement and transaction contemplated, and all prior or
20 contemporaneous agreements, understandings, representations, and statements, whether oral or
21 written and whether by a Party or that Party's legal counsel, are merged into this Settlement
22 Agreement.

23 62. **Counterparts.** This Settlement Agreement may be executed in counterparts with
24 the same force and effect as if all signatures were obtained in one document. Execution of a
25 facsimile copy shall have the same force and effect as execution of an original, and a facsimile
26 signature shall be deemed an original and valid signature. This Settlement Agreement is subject
27 only to the execution of all Parties. The Settlement Agreement may be executed in one or more
28 counterparts. All executed counterparts and each of them, including electronic, facsimile,

1 DocuSign, and scanned copies of the signature page, will be deemed to be one and the same
2 instrument and shall have the same force and effect as execution of an original, and shall be
3 deemed an original and valid signature.

4 **63. Parties' Authority.** The signatories to the Settlement Agreement represent that
5 they are fully authorized to enter into this Settlement and are fully authorized to bind the Parties
6 to all terms stated in this Settlement Agreement.

7 **64. Materiality of Terms.** Except as otherwise stated in this Settlement Agreement,
8 all terms and conditions of this Settlement in the exact form set forth in this Settlement are
9 material to this Settlement and have been relied upon by the Parties in entering into this
10 Settlement.

11 **65. Invalidity of Any Provision.** Before declaring any provision of this Settlement
12 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
13 extent possible consistent with applicable precedents so as to render all provisions of this
14 Settlement Agreement valid and enforceable.

15 **66. Further Acts and Cooperation Between the Parties.** The Parties shall
16 cooperate fully with each other and shall use their best efforts to obtain the Court's approval of
17 this Settlement Agreement and all of its terms. Each of the Parties, upon the request of another,
18 agrees to perform such further acts and to execute and to deliver such other documents as are
19 reasonably necessary to carry out the provisions of this Settlement Agreement.

20 **67. No Media Announcements.** Plaintiff, Plaintiff's Counsel, Defendants and
21 Defendants' Counsel, shall not publicize the terms or existence of the Settlement on their
22 websites, in advertising/marketing materials or on social media, other than filing documents
23 with the Court. The Parties and their counsel agree that they will not issue any press releases or
24 initiate any contact with the media about the fact, amount, or terms of the Settlement. If counsel
25 for any Party receives an inquiry about the Settlement from the media, counsel may respond
26 only after motion for approval of the Settlement has been filed. Nothing in this provision shall
27 prevent the Parties from making any required disclosure.

28 **68. Waiver of Certain Appeals.** The Parties agree to waive appeals except,

1 however, that Plaintiff or Plaintiff's Counsel may appeal any reduction in the Attorneys' Fees
2 and Costs below the amount they request from the Court, and either party may appeal any court
3 order that materially alters the Settlement Agreement's terms.

4 **69. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
5 implementation of this Settlement as well as any and all matters arising out of, or related to, the
6 implementation of this Settlement. The Court shall not have jurisdiction to modify the terms of
7 the Settlement without the consent of all of the Parties. Should any party be required to enforce
8 the terms of this Settlement, the prevailing party shall be entitled to reasonable attorneys' fees
9 and costs.

10 **70. Enforcement of Settlement Agreement.** Pursuant to Labor Code section 2699,
11 this Settlement Agreement must be approved by the Court and will be enforceable by the Court
12 pursuant to Code of Civil Procedure section 664.6. Even after the entry of judgment, the Parties
13 jointly request and reserve the Court's continuing jurisdiction under section 664.6.

14 **71. Effect of Signatures.** By their signatures, the Parties acknowledge and warrant
15 that their respective counsel will abide by and adhere to the specific obligations and actions
16 required of them in this Settlement Agreement.

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SIGNATURES**READ CAREFULLY BEFORE SIGNING**

THE PARTIES HAVE READ THE SETTLEMENT AGREEMENT. THEY HAVE
 CONSULTED WITH LEGAL COUNSEL REGARDING THE SETTLEMENT AGREEMENT
 AND KNOW THE CONTENTS IN THE SETTLEMENT AGREEMENT AND SIGN THE
 SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING
 FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

PLAINTIFF

Dated: 7/18/2023

DocuSigned by:

Plaintiff Candice Richard

**DEFENDANT DIMENSION
DEVELOPMENT COMPANY, INC.**

Dated: 8/9/23

Please Print Name of Authorized Signatory

**DEFENDANT G&B HOTEL EMPLOYEE
LEASING LLC**

Dated: 8/9/23

Please Print Name of Authorized Signatory

EXHIBIT A

Richard v. Dimension Development Company, Inc. and G&B Hotel Employee Leasing LLC
Superior Court for the State of California County of Orange
Case No. 30-2022-01261804-CU-OE-CXC

This Notice relates to the settlement of a Private Attorneys General Act (“PAGA”) action. A lawsuit has been filed by Candice Richard (“Plaintiff”), a former employee of Defendants Dimension Development Company, Inc. (“Dimension”) and G&B Hotel Employee Leasing LLC (“G&B Hotel”) (Dimension and G&B Hotel are “Defendants”) in Orange County Superior Court. Plaintiff brought the lawsuit as a representative action under California’s Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) on behalf of the State of California and other current and former non-exempt hourly-paid employees who were employed by Defendants in California at any of the Hotel Properties at any time from March 17, 2021 to May 2, 2023. By law, a PAGA action is an action for civil penalties in which the State of California receives 75% of any net settlement, and 25% of the net settlement is distributed amongst alleged “aggrieved employees.” The Hotel Properties include (1) Courtyard Cypress; (2) Courtyard Santa Ana; (3) Courtyard Santa Clarita; (4) Fairfield Santa Clarita; (5) Hampton Inn Clovis; (6) Hampton Inn Cypress; (7) Hampton Inn San Diego; (8) Hampton Inn Santa Clarita; (9) Hilton Garden Inn Sacramento; (10) Homewood Suites Agoura Hills; (11) Homewood Suites Clovis; (12) Homewood San Jose; (13) Residence Inn San Diego; and (14) Residence Inn Santa Clarita.

The lawsuit alleges Defendants did not (1) pay proper overtime wages, (2) pay proper minimum wages, (3) provide meal periods and/or pay meal period premiums, (4) provide rest periods and/or pay rest period premiums, (5) provide accurate wage statements, (6) provide the right to inspect and/or produce employment records upon request, (7) provide accurate pay records, (8) provide accurate time records, (9) pay timely wages during employment, (10) timely pay wages at termination, (11) provide employees with written notice of information material to employment, (12) properly provide the right to inspect and/or produce Plaintiff’s employment records upon request within the required time frame, (13) conduct compliant background checks, and (14) properly pay portions of gratuities paid by patrons to employees.

The lawsuit seeks PAGA civil penalties for the alleged violations. Defendants deny these allegations and further contend that they have complied with all applicable wage and hour laws governing Plaintiff and all other hourly-paid employees.

The Court has made no determination on the merits of Plaintiff’s claims, but the Parties have decided to resolve the case through settlement, with the approval of the Court.

A Judgment has been entered by the Court. Aggrieved Employees have released the Released Parties, which include Defendants, and Defendants’ parents, subsidiaries, affiliated corporations and entities, predecessors or successors, current and former officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, franchisors, franchisees, and agents, as well as any successors, assigns, or legal representatives/attorneys from the “Released Claims” for the “PAGA Period.” The Released Claims are all claims for PAGA civil penalties under the California Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7, 351, 432.5, 510, 512, 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2810.5, California Code of Regulations, Title 8, section 11050, all applicable IWC Wage Orders, and/or other provisions of law alleged to have been violated in the operative Complaint and

Plaintiff's LWDA letter with respect to Aggrieved Employees and attorneys' fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had or may claim to have, against the Released Parties (as defined above) arising out of the same facts in the Complaint and Plaintiff's LWDA letter. The PAGA Period is from March 17, 2021 to May 2, 2023. The Release Period is the same as the PAGA Period. Aggrieved Employees, other than Plaintiff, will not be deemed to have released any private rights of action and/or individual wage and hour claims held by Aggrieved Employees for any alleged violations of the Labor Code or California Wage Orders during the PAGA Period by virtue of this Settlement.

You have received this notice because Dimensions' and G&B Hotel's records indicate that you may be one of the employees whom Plaintiff alleges were potentially "aggrieved" by one or more of the alleged practices about which Plaintiff complains and are or were a non-exempt (hourly) employee of Dimension and/or G&B Hotel at any time between March 17, 2021 to May 2, 2023.

The Court has authorized a third-party settlement administrator to send you this Notice, and they have agreed to keep your contact information confidential.

The enclosed check represents your portion of the settlement payment, which is a pro-rata distribution based on the number of pay periods you worked during the applicable time period noted above. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the Parties, or the Court. The entirety of PAGA civil penalties paid to you shall be considered miscellaneous income and shall not be subject to withholdings. The settlement administrator will provide an appropriate IRS Form 1099 to you.

If you have questions about this notice, please contact the Settlement Administrator, [[____]] at [administrator phone number], or contact Plaintiff's counsel below:

LAW OFFICES OF MARK YABLONOVICH

Mark Yablonovich

Monica Balderrama

Tony Roberts

9595 Wilshire Boulevard, Suite 900

Beverly Hills, California 90212-2511

Telephone: (310) 286-0246

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.