

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Gabriela Bustamante
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

GABRIELA BUSTAMANTE, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC., a
Delaware corporation; and DOES 1
through 10 inclusive,

Defendants.

Case No. 22CV400968

*Assigned to the Hon. Theodore C. Zayner, Dept.
D19*

CLASS ACTION

**SECOND SUPPLEMENTAL DECLARATION
OF DANIEL F. GAINES IN SUPPORT OF
UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Date: August 21, 2024

Time: 1:30 p.m.

Dept.: D19

Action Filed: July 21, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Gabriela Bustamante
4 (“Bustamante” or “Plaintiff”) and proposed Class Counsel in this action. I have personal
5 knowledge of the facts set forth herein and if called as a witness to testify to them, I could and
6 would do so competently.

7 2. On or about July 3, 2024, the Court issued its Tentative Ruling (the “Ruling”)
8 regarding Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (the
9 “Motion”). A true and correct copy of the Ruling is attached hereto as **Exhibit A**. The Court’s
10 Ruling stated that no additional filings, other than this supplemental declaration, would be
11 permitted. The Parties are prepared to submit an Amended Proposed Order approving the Motion
12 after the hearing.

13 **Issues re: the Settlement and Class Notice:**

14 3. The Parties jointly prepared the First Amended Settlement Agreement (the
15 “Amended Settlement”). A true and correct copy of the Amended Settlement is attached as **Exhibit**
16 **B**. A true and correct copy of the Redlined Amended Settlement is attached as **Exhibit C**.

17 4. The Parties jointly prepared the Second Amended Notice of Proposed Class Action
18 Settlement and Class Action Settlement Hearing (“Second Amended Class Notice”). A true and
19 correct copy of the Second Amended Class Notice is attached as Exhibit 1 to **Exhibit B**. A true and
20 correct copy of the Second Redlined Amended Class Notice is attached as Exhibit 1 to **Exhibit C**.

21 5. After the hearing on the Motion, my office will submit an Amended Proposed Order
22 that states the Court-approved *cy pres* recipient. The Parties have agreed to designate UNICEF
23 USA as the *cy pres* as the recipient of unclaimed or abandoned class member funds pursuant to
24 Code of Civil Procedure § 384. *See* Amended Settlement at ¶ 10.2.

25 6. The Parties have agreed to end the Class and PAGA periods on November 24, 2023,
26 which is the date that Defendant represents has reached 37,891 workweeks. *See* Amended
27 Settlement at ¶¶ 1.6, 1.19.

1 7. The Parties also agreed to reduce the amount of attorneys' fees requested from 35%
2 to 33-1/3% of the \$290,000 Gross Settlement Amount and to reduce Plaintiff's service award
3 request from \$10,000 to \$4,500. *See* Amended Settlement at ¶¶ 10.3, 10.5. The Parties have updated
4 these numbers in the Amended Class Notice and will also put these numbers in the to-be-filed
5 Amended Proposed Order. My office will submit lodestar information (including hourly rates and
6 hours worked) and evidence of actual costs incurred prior to the final approval hearing as part of
7 our request for fees and costs.

8 8. Finally, as shown in the Second Redlined Amended Class Notice, the Parties have
9 revised the Second Amended Class Notice to reflect the updated end date for the Class and PAGA
10 Periods.

11 **Discrepancy re: Number of Class Members and Defendant's Maximum Exposure:**

12 9. In the initial filing of the Motion, my office stated that the Class consisted of
13 approximately 400 members. This inflated number accounted for a potential increase of Class
14 Members from the date of mediation through the date of preliminary approval. In my supplemental
15 declaration, I stated that there were an estimated 354 Class Members, which was the number
16 provided to my office at mediation. Defendant has confirmed to me that the total number of Class
17 Members through November 24, 2023 is 383 Class Members. This means that the Amended
18 Settlement provides for an average payment of approximately \$349.43 to each of the 383 Class
19 Members.

20 10. Regarding Defendant's maximum exposure, in the initial Motion, my office
21 included an exposure analysis that stacked the PAGA penalties for each claim, for a total of
22 \$3,761,400 in potential PAGA penalties. However, in my supplemental declaration, I stated that
23 my office believed that a more accurate number for the PAGA penalties was \$2,018,600, based on
24 one penalty per pay period at \$100 per penalty. *See* Supplemental Declaration of Daniel F. Gaines
25 at ¶¶ 23-28. A true and correct copy of my supplemental declaration is attached hereto as **Exhibit**
26 **D.**

27 11. The discrepancy between the maximum liability calculated by the Court
28 (\$7,939,594) and the maximum liability calculated in my supplemental declaration (\$6,196,794)

1 can be attributed to the \$1,742,800 difference in the maximum value of the PAGA penalties, as
2 discussed above.

3 12. The Parties met and conferred on July 18, 2024 and on July 31, 2024, and believe
4 that this second supplemental declaration, the Amended Settlement, and the Second Amended Class
5 Notice should adequately address the Court's concerns. However, if the Court has additional
6 questions or issues with the Motion, the Parties respectfully request that the Court allow the Parties
7 to appear at the hearing on August 21, 2024 to discuss these issues with the Court.

8 13. Concurrently with the filing of this second supplemental declaration, my office is
9 transmitting the Amended Settlement (and this declaration) to the LWDA, in compliance with
10 Labor Code § 2699(1)(2). Evidence of submission is attached hereto as **Exhibit E**.

11 I declare, under penalty of perjury, under the laws of the State of California, that the
12 foregoing is true and correct. Executed on August 5, 2024 at Westlake Village, California.

13 *Daniel F. Gaines*
14 DANIEL F. GAINES
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EXHIBIT A

Calendar Line 5

Case Name: Bustamante v. Marriott Hotel Services, Inc. (PAGA)
Case No.: 22CV400968

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This putative class and representative action arises out of alleged wage-and-hour violations. Plaintiff Gabriela Bustamante (“Plaintiff”) filed her original complaint against defendant Marriott Hotel Services, Inc. (“Defendant”) on July 21, 2022. The complaint alleged a single cause of action under the Private Attorneys General Act of 2004 (“PAGA”).

Several months later, on November 17, 2022, Plaintiff filed a first amended complaint adding several class claims.

Defendant removed the action to federal court on December 16, 2022.

On September 14, 2023, Plaintiff filed the operative second amended complaint (“SAC”), which alleges the following causes of action: (1) Failure to Pay All Wages Due (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7; IWC Wage Order 5-2001); (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code §§ 226(a), (e)); (5) Failure to Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business and Professions Code § 17200; and (7) Penalties Pursuant to Labor Code §§ 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558.

The same day, the federal court remanded the case to this court.

The parties have reached a settlement, and Plaintiff has moved for preliminary approval of the settlement. The motion was unopposed.

On May 8, 2024, the court continued the motion for preliminary approval to July 3, 2024. In its tentative ruling, the court directed Plaintiff to file a supplemental declaration identifying a new *cy pres* recipient and addressing the court's concern regarding the lack of a clear end date for the class and PAGA periods and explaining in greater detail the factual basis and rationale behind the discount applied to each of her claims.

On June 17, 2024, Plaintiff's counsel filed a supplemental declaration in support of the motion for preliminary approval of the settlement.

II. LEGAL STANDARD

Generally, “questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”

(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

“The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”

(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment “in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77.)

III. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

[a]ll individuals who are or who have been directly employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the Class Period.

(Declaration of Daniel F. Gaines in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement (“Gaines Dec.”), Ex. B (“Settlement Agreement”),

¶ 1.6.) The number of workweeks is not well-defined in the settlement agreement, nor is the end date for the Class Period apparent on the face of the agreement. Paragraph 10.9 of the settlement, entitled “Escalator Clause,” provides:

In connection with Mediation, Defendant estimated that as of May 11, 2023, there were approximately 33,000 weeks worked by Class Members. Mediation took place on July 26, 2023. The Parties agree that if, as of the end date of the pay period covering July 26, 2023, the number of workweeks worked by Class Members was 37,950 weeks or more (i.e., if the number of weeks worked by Class Members as of the end date of the pay period covering July 26, 2023 is fifteen percent (15%) or more greater than 33,000 weeks worked), Defendant shall have the option to (i) pay a pro rata increase on the Settlement Amount to compensate for the overage; or (ii) end the Class Period and PAGA Period on the date that is one day before the date the total number of weeks worked by Class Members exceeds 37,950 weeks worked.

(Settlement Agreement, ¶ 10.9)

This class also includes a subset of PAGA Members, who are defined as all individuals who are or who have been employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the PAGA Period. (Settlement Agreement, ¶ 1.17.) The PAGA Period is defined as “the time from July 21, 2021 through the date on which the [c]ourt issue the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9. (Settlement Agreement, ¶ 1.19.)

According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement amount of \$290,000. (Settlement Agreement, ¶ 1.27.) The gross settlement amount includes attorney fees of \$101,500 (35 percent of the gross settlement amount), litigation costs not to exceed \$20,000, a service award for the class representative not to exceed \$10,000, settlement administration costs not to exceed \$10,000, and a PAGA allocation of \$25,000 (75

percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members). (Settlement Agreement, ¶¶ 1.16, 1.18, 1.27, 10.3, 10.4, 10.5, 10.6.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 10.2) Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (Settlement Agreement, ¶¶ 1.12, 1.18, 10.4.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California State Controllers' Office in accordance with California Unclaimed Property Law. (Settlement Agreement, ¶ 10.2.)

In its May 8, 2024 tentative ruling, the court stated that the parties' proposal to send funds from uncashed checks issued to class member to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." The court directed Plaintiff to provide a new *cy pres* recipient in compliance Code of Civil Procedure section 384.

Plaintiff has since submitted a supplemental declaration stating that the parties have agreed to designate UNICEF USA as the *cy pres* recipient. (Supplemental Declaration of Daniel F. Gaines in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement ("Gaines Supp. Dec."), ¶ 4.) The court approves this designation for the *cy pres* recipient.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from claims that were asserted, or could have been asserted, in the operative SAC based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.1.) PAGA Members agree to release Defendant, and related persons and entities, from PAGA claims seeking civil penalties that were asserted, or could have been asserted, in the operative SAC

based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.4.) Plaintiff also agrees to a general release of claims. (Settlement Agreement, ¶ 6.2)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves claims on behalf of approximately 400 class members. (Gaines Dec., ¶¶ 26-27.) Prior to mediation, Plaintiff obtained informal discovery including a 25 percent data sample. (*Id.* at ¶ 11.) Plaintiff's counsel reviewed a representative sampling and engaged an expert to create a damages analysis. (*Id.* at ¶¶ 11-16.) The parties participated in private mediation with the Hon. Theirry Colaw (Ret.) on July 26, 2023, and reached a settlement. (*Id.* at ¶ 12.)

In its May 8, 2024 tentative ruling, the court identified several concerns regarding the fairness of the settlement. First, the court explained that the proposed settlement amount is below the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201 (*Cavasos*), at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

In his initial declaration in support of the motion for approval of the settlement, Plaintiff's counsel did not provide a total amount for Defendant's estimated maximum potential exposure. Therefore, the court reviewed the figures provided with respect to each cause of action and arrived at a sum of \$7,939,594 for Defendant's maximum potential exposure. Given the gross settlement amount of \$290,000, the court concluded that the settlement represented approximately 3.6 percent of the maximum potential value of Plaintiff's claims. This percentage is clearly lower than the acceptable range as described in *Cavasos* (i.e., 5-35%).

Next, the court found that the definitions of the class and PAGA members were unreasonable because, as drafted, the Class Period and the PAGA Period continue "through the date on which the Court issues the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9." (Settlement Agreement, ¶¶ 1.6, 1.19.) Paragraph 10.9 is the escalator clause in the settlement agreement and provides that Defendant has the option

to either increase the settlement amount or change the Class Period or PAGA Period end date depending on the number of workweeks worked as of the end date of the pay period covering July 26, 2023.

Thus, the court stated the settlement agreement as drafted does not provide for a clear end for the Class Period and PAGA Period. This could result in class members being told that they are in class, and later being told that they are not in the class, and the court stated it would not give preliminary approval under such circumstances. The court stated that the parties want to keep the adjusted end date, they will have to determine if the escalator clause applies before sending out the class notices so that it is not sent to non-participants.

The court also expressed concern regarding whether the Plaintiff's discounts of her claims were fair and reasonable. The court noted that Plaintiff's counsel did not explain what discovery Plaintiff made and what specific information she received from Defendant. Plaintiff also did not provide an estimate of the average payment to be received by class members and PAGA members. The court noted that Plaintiff did not explain why a 50 percent violation rate was used for the second cause of action (i.e., rest period violations), and that Plaintiff provided no analysis for the sixth cause of action (i.e., the "UCL" claim). Lastly, the court stated it was unclear whether the valuation of the PAGA claim included stacking penalties and whether it was based on initial or subsequent violations.

The supplemental declaration filed by Plaintiff's counsel on June 17, 2023 discusses the court's concerns regarding the fairness of the settlement. Plaintiff now states that estimated maximum potential recovery of its claims is \$6,196,794. (Gaines Supp. Dec., ¶ 30.) Plaintiff provides a breakdown of this sum by claim. (*Id.* at ¶¶ 18-30.) Using Plaintiff's estimate, the settlement represents approximately 4.7 percent of the maximum potential value of Plaintiff's claim. If rounded, the settlement falls just within the low end of the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos*, *supra*, 2022 U.S.Dist.LEXIS 30201 (*Cavasos*), at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

However, it is not clear to the court how the estimated numbers for Defendant's maximum exposure changed so significantly between the first and second declarations in

support from Plaintiff's counsel. The court previously calculated, using Plaintiff's numbers, that the Defendant's maximum exposure was \$7,939,594. Now, Plaintiff indicates Defendant's maximum exposure is \$6,196,794. This change is significant, as moves the settlement's relevant percentage-recovery figure from 3.6 percent to 4.7 percent. Accordingly, prior to the continued hearing, Plaintiff's counsel shall submit a declaration explaining this discrepancy.

Plaintiff also provides additional explanation and details pertaining to the settlement amount. Plaintiff now states that the settlement provides for an average payment of approximately \$378.09 for each of the class members. (Gaines Dec. at ¶ 32.) Plaintiff states that Defendant informally provided its employee handbook and personnel records. (*Id.* at ¶ 12.) Plaintiff further explains that a 50 percent violation rate was used for calculations for the second cause of action “[b]ased on the likelihood that Plaintiff would be able to demonstrate some, but not all, rest breaks were not properly provided[.]” (*Id.* at ¶ 18.) Plaintiff's counsel asserts that “it would be difficult, if not impossible, through a survey process, to demonstrate a 100% violation rate for rest breaks particularly where, as here, Defendant argues that rest breaks were indeed offered and the written policies complied with California law.” (*Ibid.*) Plaintiff's counsel also clarified that the valuation of the PAGA claim does not include “stacking” penalties and is based on one penalty per pay period. (*Id.* at ¶¶ 26-27.)

Thus, the supplemental declaration filed by Plaintiff addresses some of the concerns identified by the court in its prior tentative ruling concerning the fairness of the settlement. It also states that the parties have reduced the attorney's fees provision from 35 percent to the more typical 33 and 1/3 percent, and that the parties revised the class notice in accordance with the court's instructions. (Gaines Supp. Dec., ¶¶ 9-10.)

However, the court continues to have concerns with regard to the end date of the Class Period and the PAGA Periods. Plaintiff states that the parties negotiated for the provisions calling for these dates to be tracked to the date of the court's preliminary approval (unless the escalator clause applies). (Gaines Supp. Dec., ¶¶ 5, 8.) According to Plaintiff, “Defendant has determined that as of July 26, 2023, the workweek count did not exceed 37,950.” (*Id.* at ¶ 7.) Therefore, as the court understands it, Plaintiff argues that the conditions of the escalator

clause have not been met, and Defendant does not have the option to adjust the end date. (*Id.* at ¶¶ 5-8.)

Nevertheless, the court remains concerned that the only settlement agreement signed by the parties and provided to the court leaves open the possibility for an indefinite end date for both the Class Period and the PAGA Period. Thus, under the settlement as currently drafted, if it turns out that Defendant later determines that the workweek count as of July 26, 2023 does in fact exceed 37,950, Defendant could still exercise its right to alter the end dates. If new information concerning the workweeks were made available after the class notices were mailed, then it is possible someone could be told that they were a class member, and then later told that they were not. As the court previously indicated, it will not grant preliminary approval to settlement that could result in such a scenario.

The court is also concerned that the estimated number of class members appears to have changed without explanation. Plaintiff's counsel previously stated that the class includes approximately 400 members. (Gaines Dec., ¶¶ 26-27.) Plaintiff's counsel now states that the settlement provides for an average payment of approximately \$378.09 for each of the class members, based on an estimated 354 class members. (Gaines Supp. Dec. at ¶ 32.)

The parties have made progress in addressing the court's concerns but have not addressed them fully. The court will grant Plaintiff one more opportunity to support her motion for preliminary approval. As Plaintiff has represented that the escalator clause at paragraph 10.9 does not apply, the parties are instructed to meet and confer with the objective of entering into an amended settlement agreement in which the end dates for the Class Period and PAGA Period are clearly specified. Prior to the continued hearing, Plaintiff's counsel shall file a supplemental declaration advising the court of these meet-and-confer efforts and, if appropriate, include any amended settlement agreement reached by the parties. The supplemental declaration shall also explain why the estimated number of class members has changed and why there is a discrepancy (between the initial and supplemental declarations from Plaintiff's counsel) for the numbers provided for Defendant's maximum exposure.

C. Incentive Award, Fees, and Costs

Plaintiff requests an enhancement award in the amount of \$10,000.

The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These “incentive awards” to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff filed a declaration specifically detailing her participation in the action. Plaintiff declares that she spent approximately 25 hours in connection with this action, including discussing the case with class counsel, providing class counsel information about Defendant’s policies and procedures, gathering information and documents, and attending mediation. (Declaration of Gabriela Bustamante in Support of Unopposed Motion for Preliminary Approval Class and Representative Action Settlement, ¶¶ 6-9.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her future employment. (See *Covillo v. Specialty’s Café* (N.D.Cal. 2014) 2014 U.S.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant “reputational risk” in bringing an action against an employer].)

However, the requested incentive award in the amount of \$10,000 appears to be excessive. The amount requested is substantially higher than the court typically awards for the amount of time Plaintiff spent in connection with this action (i.e., approximately 25 hours). In light of the forgoing, the court finds a service award of \$4,500 to be reasonable and approves the award in that lesser amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel will seek attorney fees of \$96,666.67 (33 1/3 percent of the gross settlement amount). Plaintiff’s counsel shall submit lodestar information (including hourly rates and hours worked)

prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a class “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

The “community-of-interest” requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield “substantial benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff has stated that there are approximately 400 class members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. As discussed above, the parties have amended the class notice in accordance with the court's prior instructions. However, should the parties reach any further agreements with respect to terms of the proposed settlement, the class notice must be amended to reflect any such changes.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class and representative action settlement is CONTINUED to August 21, 2024, in Department 19 at 1:30 p.m. No later than August 5, 2024, Plaintiff's counsel shall file a supplemental declaration with the information requested by the court. No further filings are permitted.

Plaintiff shall prepare the order.

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EXHIBIT B

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Gabriela Bustamante,
on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

A Limited Liability Partnership
Including Professional Corporations
GREG S. LABATE, Cal. Bar No. 149918
glabate@sheppardmullin.com
ERIC T. ANGEL, Cal. Bar No. 293157
eangel@sheppardmullin.com
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626-1993
Telephone: 714.513.5100
Facsimile: 714.513.5130

Attorneys for Defendant MARRIOTT HOTEL
SERVICES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

GABRIELA BUSTAMANTE, on behalf of
herself and all “aggrieved employees” pursuant
to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

MARRIOTT HOTEL SERVICES, INC., a
Delaware corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 22CV400968
Assigned to: Hon. Theodore C. Zayner
Dept.: D19

**AMENDED AND RESTATED
SETTLEMENT AGREEMENT**

Complaint Filed: July 21, 2022
Trial Date: None Set

1 This Amended and Restated Settlement Agreement is made by and between Plaintiff
2 Gabriela Bustamante (“Plaintiff”), on behalf of herself and each of the Class Members and PAGA
3 Members as defined herein, and Defendant Marriott Hotel Services, Inc. (*now known as* Marriott
4 Hotel Services, LLC), and is intended to resolve and settle the pending action entitled Gabriela
5 Bustamante, et al. v. Marriott Hotel Services, Inc., Case No. 22CV400968 (Santa Clara County
6 Superior Court) (the “Settlement”).

7
8 RECITALS

9 WHEREAS, on or about November 17, 2023, the Parties fully executed a Settlement
10 Agreement intended to resolve and settle the Action (“Original Agreement”);

11 WHEREAS, the Parties now intend to amend and restate the Original Agreement in its
12 entirety as set forth herein.

13 1. **DEFINITIONS**

14 1.1 The term “Action” means the action entitled Gabriela Bustamante, et al. v. Marriott
15 Hotel Services, Inc., Case No. 22CV400968 (Santa Clara County Superior Court).

16 1.2 The term “Agreement” refers to this Amended and Restated Settlement Agreement.

17 1.3 The terms “Class” or “Class Members” means all individuals who are or who have
18 been directly employed by Defendant in California at the Monterey Marriott as a non-exempt
19 employee during any portion of the Class Period.

20 1.4 The term “Class Counsel” means Gaines & Gaines, APLC.

21 1.5 The term “Class List and Data” means the name, last known mailing address, Social
22 Security number, number of Workweeks for each Class Member during the Class Period, and
23 number of PAGA Workweeks for each PAGA Member during the PAGA Period.

24 1.6 The term “Class Period” means the time from July 21, 2018 through November 24,
25 2023, the date when the number of workweeks worked by Class Members since July 21, 2018
26 reached 37,891.

27 1.7 The term “Court” means the Superior Court of California, County of Santa Clara.

28 1.8 The term “Defendant” or “Marriott” means Defendant Marriott Hotel Services, Inc.
(*now known as* Marriott Hotel Services, LLC).

1 1.9 The “Effective Date” of the Settlement will be the last to occur of the following:
2 (a) if there are no objections to the Settlement, then the date on which the Court enters the Final
3 Approval Order; (b) if one or more timely objections has/have been filed and not withdrawn, then
4 upon passage of the applicable date for an objector to seek appellate review of the Final Approval
5 Order; or (c) if an appeal, review or writ is sought from the Final Approval Order, the day after the
6 Final Approval Order is affirmed or the appeal, review or writ is dismissed or denied, and the Final
7 Approval Order is no longer subject to further judicial review.

8 1.10 The term “Final Approval Order” means the order of the Court that grants final
9 approval of the Settlement.

10 1.11 The term “Final Judgment” means the final judgment entered by the Court based
11 upon the Settlement.

12 1.12 The term “Individual PAGA Payment” means the PAGA Member’s pro-rata share of
13 the portion of the PAGA Payment allocated to PAGA Members pursuant to Section 10 below.

14 1.13 The term “Individual Settlement Payment” means the amount to be paid to a
15 Participating Class Member from the Net Settlement Amount pursuant to Section 10 below.

16 1.14 The term “Mediator” means Hon. Thierry Colaw (Ret.).

17 1.15 The term “Monterey Marriott” means the hotel located at 350 Calle Principal,
18 Monterey, CA 93940.

19 1.16 The term “Net Settlement Amount” means the Settlement Amount minus the Court-
20 approved Attorneys’ Fees, Litigation Costs and Expenses, Service Award to Plaintiff, Settlement
21 Administration Costs, and PAGA Payment.

22 1.17 The term “PAGA Member(s)” means all individuals who are or who have been
23 employed by Defendant in California at the Monterey Marriott as a non-exempt employee during
24 any portion of the PAGA Period.

25 1.18 The term “PAGA Payment” means the payment made to the LWDA and PAGA
26 Members for civil penalties pursuant to PAGA and the terms of this Agreement.

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1.19 The term “PAGA Period” means the time from July 21, 2021 through November 24, 2023, the date when the number of workweeks worked by Class Members since July 21, 2018 reached 37,891.

1.20 The term “PAGA Workweek(s)” refers to the week(s) during the PAGA Period in which a PAGA Member worked for Defendant at the Monterey Marriott.

1.21 The term “Participating Class Members” means Class Members who have not timely requested exclusion from the Settlement.

1.22 The term “Parties” means Plaintiff and Defendant, collectively.

1.23 The term “Party” means Plaintiff or Defendant, individually.

1.24 The term “Plaintiff” means Plaintiff Gabriela Bustamante.

1.25 The term “Preliminary Approval Order” means the order of the Court that grants preliminary approval of the Settlement.

1.26 The term “Settlement Administrator” means ILYM Group, Inc. (“ILYM”), the third-party settlement administrator agreed upon by Parties to administer this Settlement.

1.27 The term “Settlement Amount” means the amount of Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00), inclusive of the Attorneys’ Fees and Litigation Costs and Expenses incurred by Class Counsel, the Settlement Administration Costs, the Service Award to Plaintiff, and the PAGA Payment to the State of California Labor Workforce and Development Agency (“LWDA”) and PAGA Members, but excluding the employer portion of any applicable payroll taxes.

1.28 The term “Workweek(s)” refers to week(s) during the Class Period in which a Class Member worked for Defendant at the Monterey Marriott.

2. **SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT**

2.1 On July 21, 2022, Plaintiff initiated the Action by filing a representative action against in this Court against Defendant pursuant to the Private Attorneys General Act of 2004 (“PAGA”). On November 17, 2022, Plaintiff filed her First Amended Complaint against Defendant, which added proposed class claims. On December 16, 2022, Defendant removed the Action to the United States District Court for the Northern District of California.

1 2.2 On July 26, 2023, the Parties participated in private mediation conducted by the
2 Mediator, an experienced and respected former judge (“Mediation”). The settlement discussions
3 were conducted at arm’s length. The Parties reached an impasse at Mediation, but the Mediator
4 successfully assisted the Parties to agree on a resolution of the Action through post-Mediation
5 discussions and negotiations. The Settlement is the result of an informed and detailed analysis of
6 the risks facing all Parties in litigating this case, including but not limited to, careful consideration
7 of the legal and factual obstacles to Plaintiff’s prospects of obtaining class certification and on the
8 merits, and Defendant’s defenses, as well as Defendant’s potential exposure and the additional costs
9 of litigating the Action.

10 2.3 On September 14, 2023, Plaintiff filed her Second Amended Complaint (the
11 operative complaint in the Action), which amended the definition of the putative class to limit the
12 scope to only non-exempt employees of Defendant at the Monterey Marriott, and asserted the
13 following claims against Defendant: (1) Failure to Pay All Wages Due; (2) Failure to Provide Rest
14 Periods or Compensation In Lieu Thereof; (3) Failure to Provide Meal Periods or Compensation In
15 Lieu Thereof; (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage
16 Statement Provisions; (5) Failure to Pay Wages Due at Separation of Employment; (6) Violation Of
17 Business and Professions Code § 17200; and (7) PAGA (“Second Amended Complaint”). Also, on
18 September 14, 2023, this Action was remanded from the United States District Court for the
19 Northern District of California to this Court.

20 2.4 This Agreement is intended to and does effectuate the full, final, and complete
21 resolution of the Action.

22 2.5 The Parties believe that continued litigation would be protracted, expensive, and
23 uncertain, and that this Settlement is in the best interests of the Class, PAGA Members, and
24 Defendant. In light of these realities, the Parties believe that this Settlement is the best way to
25 resolve the disputes between them.

26 3. **JURISDICTION, ENFORCEMENT, AND INTERPRETATION**

27 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
28 includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the

1 Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the
2 Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of
3 the terms of this Agreement and all orders and judgments entered in connection therewith, pursuant
4 to California Rules of Court Rule 3.769, *et seq.* and California Code of Civil Procedure Section
5 664.6, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting,
6 implementing, and enforcing the Settlement embodied in this Agreement and all orders and
7 judgments entered in connection therewith. The Parties and their counsel agree that a court, upon
8 motion, may enter judgment pursuant to the Agreement and California Code of Civil Procedure
9 Section 664.6 and the Agreement is admissible in evidence for purposes of enforcement pursuant to
10 California Evidence Code Section 1123. The Agreement will be interpreted and enforced under the
11 laws of the State of California without regard to its conflict of laws provisions. Any dispute arising
12 out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
13 exclusively in the Court, and the Parties hereby consent to the jurisdiction of the Court over them
14 solely in connection therewith.

15 4. **NO ADMISSION WITH RESPECT TO LIABILITY**

16 4.1 The Parties agree that this Agreement reflects their good faith compromise of the
17 Action, based upon their assessment of the mutual risks and costs of further litigation and the
18 assessments of their respective counsel. This Agreement does not constitute, is not intended to
19 constitute, and will not be deemed to constitute, an admission of liability or lack of liability by the
20 Parties as to the merits, validity, or accuracy of any of the allegations or claims made against
21 Defendant in the Action or the appropriateness of class certification. Defendant denies each of
22 Plaintiff's allegations in their entirety and alleges that Plaintiff and all other Class Members and
23 PAGA Members were provided compensation and treated in all respects in accordance with
24 California law with regard to the claims and facts alleged in the Second Amended Complaint.

25 4.2 Nothing in this Agreement, nor any action taken or made in implementation thereof,
26 including, without limitation, any statements, discussions, communications, or any materials
27 prepared, exchanged, issued, or used during the course of the negotiations leading up to the
28 Agreement, is intended by the Parties to or will constitute, be introduced, or be submitted in any

1 way in the Action or any other judicial, arbitral, administrative, investigative or other forum or
2 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
3 regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding
4 the foregoing, the Agreement may be used in any proceeding in the Court that has as its purpose the
5 interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the
6 Court entered into in connection therewith. Additionally, insofar as any of the foregoing material is
7 required to be filed by any Court, by Court order, the Parties will comply with such order but will
8 notify the other Party of such an order at least ten (10) days prior to filing of the documents.

9 4.3 The Parties agree that Plaintiff's forthcoming motion for preliminary approval of the
10 Settlement, which will, among other things, seek certification of the Class, is for purposes of the
11 Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification
12 will have no force or effect. The Parties agree that certification for purposes of the Settlement is in
13 no way an admission that class certification is proper under the standard applied to contested
14 certification motions and that this Agreement will not be submitted in this or any other proceeding
15 as evidence that (i) the Class should be certified, or (ii) Defendant is liable to Plaintiff or any of the
16 Class Members or PAGA Members. Further, neither this Agreement nor the Court's actions with
17 regard to this Agreement will be submitted in any court or other tribunal regarding the propriety of
18 class certification or collective treatment for purposes other than the settlement of the Action. In
19 the event that this Agreement is not approved by the Court or any appellate court, is terminated, or
20 otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected
21 in any way, any of its objections or defenses in the Action, including, but not limited to, its defenses
22 in opposition to class certification.

23 5. **CLASS CERTIFICATION**

24 For the purposes of this Agreement only, the Parties agree to the certification of the Class.
25 As set forth above, Defendant expressly reserves its right to oppose class certification should the
26 Court decide to not approve this Settlement.
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1 6. **RELEASE AND WAIVER**

2 6.1 Release and Waiver of Claims by Participating Class Members

3 Participating Class Members, and their heirs, successors, assigns, and/or agents, and each of
4 them, upon the Effective Date, and subject to Defendant's payment of the Settlement Amount and
5 by operation of the Final Approval Order, shall fully and finally release and discharge Defendant,
6 the owners and operators of the Monterey Marriott, and each of them, and each of their past,
7 present, and future parent companies, subsidiaries, related companies, and affiliates, and their
8 respective shareholders, members, partners, representatives, fiduciaries, agents (including, without
9 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity
10 sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or
11 future officers, directors and employees), and each of their predecessors, successors, heirs, and
12 assigns, and any individual or entity which could be jointly liable with Defendant, or any of them
13 (collectively, the "Released Parties"), from any and all Released Claims arising out of employment
14 at the Monterey Marriott in a non-exempt position which arose at any time during the Class Period.
15 For purposes of this Agreement, the "Released Claims" are defined as the claims, debts, liabilities,
16 demands, actions, or causes of action pleaded or asserted in the Second Amended Complaint in the
17 Action or that could have been pleaded or asserted based upon the facts alleged in the Second
18 Amended Complaint in the Action, including but not limited to local, state, and/or federal wage and
19 hour claims, failure to pay all wages due, including minimum wages, straight time compensation,
20 overtime compensation, double-time compensation, and interest; the calculation of the regular rate
21 of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest
22 period penalties at all or at the proper rate of pay; payment for all hours worked, including off-the-
23 clock work; failure to provide accurate itemized wage statements; failure to timely pay all wages
24 during employment; failure to timely pay all wages due at separation of employment; unfair
25 business practices; declaratory relief; penalties, including but not limited to PAGA penalties, wage
26 statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys'
27 fees and costs. The Released Claims also expressly include all claims arising under the California
28 Labor Code (including but not limited to Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3,

1 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and
2 2699 *et seq.*); the Wage Orders of the California Industrial Welfare Commission, including but not
3 limited to Wage Order No. 5-2001; PAGA; California Business and Professions Code
4 Section 17200, *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336,
5 and 3294; 8 CCR Sections 11010, 11040, and 11070; California Code of Civil Procedure, including
6 but not limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, *et seq.* The Released
7 Claims also include claims for civil penalties that accrued during the PAGA Period under PAGA to
8 the extent they were alleged or reasonably could have been alleged based on the factual allegations
9 in the PAGA notice filed with the LWDA by Plaintiff or any pleadings filed in the Action by
10 Plaintiff.

11 The Participating Class Members, agree, upon the Effective Date and by operation of the
12 Final Approval Order, to release any further attempt, by lawsuit, administrative claim or action,
13 arbitration, demand, or other action of any kind by each and all of the Participating Class Members
14 (including participation to any extent in any class or collective action), to obtain a recovery against
15 any of the Released Parties for the Released Claims. Class Members who endorse their settlement
16 checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
17 (“FLSA”) arising during the Class Period and reasonably related to any or all of the aforementioned
18 claims.

19 The Released Claims exclude the release of claims not permitted by law.

20 6.2 General Release and Waiver of Claims by Plaintiff

21 As of and subject to the occurrence of the Effective Date, and subject to Defendant’s
22 payment of the Settlement Amount, and in exchange for the Service Award described in Section
23 10.3, Plaintiff, on behalf of herself and her heirs, successors, assigns, and/or agents, and each of
24 them, fully and finally releases the Released Parties, and each of them, from any and all claims,
25 whether asserted or unasserted, known and unknown, unforeseen, unanticipated, unsuspected or
26 latent, which Plaintiff or any of her heirs, successors, assigns, and/or agents has at any time owned
27 or held prior to the date of execution of this Agreement, under federal, state and/or local law,
28 statute, ordinance, regulation, common law, or other source of law, including but not limited to

1 claims arising from or in any way related to her employment with Defendant and/or her
2 compensation while an employee of Defendant (“Plaintiff’s Released Claims”). Plaintiffs’
3 Released Claims include, but are not limited to, all claims arising from or related to the Action; all
4 claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
5 compensation, overtime compensation, double-time compensation, and interest; the calculation of
6 the regular rate of pay; wages related to alleged illegal rounding; missed meal periods and rest
7 periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay;
8 reimbursement for all business expenses; payment for all hours worked, including off-the-clock
9 work; inaccurate wage statements; unauthorized or improper deductions; failure to keep accurate
10 records; unfair business practices; penalties, including, but not limited to, meal/rest period penalties,
11 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
12 penalties; and attorneys’ fees and costs; all claims arising under the California Labor Code
13 (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
14 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8,
15 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
16 1194.2, 1197, 1197.1, 1197.2, 1198, 2802, 2698 et seq., and 2699 et seq.); all claims arising under
17 the Wage Orders of the California Industrial Welfare Commission; PAGA; California Business and
18 Professions Code section 17200, et seq., the California Civil Code (to include, but not limited to,
19 sections 3287, 3336 and 3294); 12 CCR § 11040; 8 CCR § 11060; California Code of Civil
20 Procedure § 1021.5, the California common law of contract, the FLSA, 29 U.S.C. § 201, et seq.,
21 federal common law, and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.;
22 all claims for lost wages and benefits, emotional distress, punitive damages, other damages, and
23 attorneys’ fees and costs arising under federal, state, or local laws for discrimination, harassment,
24 retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C.
25 section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the
26 Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and
27 the law of contract and tort. This release excludes the release of claims not permitted by law.
28 Plaintiff’s Released Claims include all claims, whether known or unknown. Plaintiff stipulates and

1 agrees that, upon the Effective Date, Plaintiff shall be deemed to have, and by operation of the Final
2 Approval Order shall have, expressly waived and relinquished, to the fullest extent permitted by
3 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
4 similar provision under federal or state law, which provides:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
6 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
7 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
8 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
9 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
10 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 Plaintiff may hereafter discover facts in addition to or different from those Plaintiff now
12 knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims and
13 this General Release, but Plaintiff, upon the Effective Date, shall be deemed to have, and by
14 operation of the Final Approval Order shall have, fully, finally, and forever settled and released any
15 and all of the claims released pursuant to the General Release, whether known or unknown,
16 suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have
17 existed upon any theory of law or equity now existing or coming into existence in the future,
18 including, but not limited to, conduct that is negligent, intentional, with or without malice, or a
19 breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such
20 different or additional facts. Provided however, that Plaintiff does not release her rights to any
21 claims for earned benefits under the terms of any employee benefit plan applicable to her, claims to
22 enforce rights provided by this Agreement, claims that arise after the execution of this Agreement,
23 and claims that cannot be released as a matter of law.

24 6.3 Waiver of Age Claims

25 This Agreement constitutes a knowing and voluntary waiver of any and all rights or claims
26 that Plaintiff has or may have under the Federal Age Discrimination In Employment Act, as
27 amended by the Older Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621 et seq.
28 ("ADEA"). This paragraph and this Agreement are written in a manner calculated to be understood

1 by Plaintiff. Plaintiff has been previously advised in writing to consult with an attorney before
2 signing this Agreement. Plaintiff covenants and agrees that she has previously had a reasonable
3 time of up to 21 days in which to consider signing this Agreement. Plaintiff covenants and agrees
4 that she knowingly and voluntarily decided not to use all 21 days and waived any claim that
5 Plaintiff was not given the 21-day period or did not use the entire 21 days to consider this
6 Agreement. Plaintiff may revoke this Agreement as to the ADEA and only with respect to her
7 release of any age claims she has or may have against any of the Released Parties at any time within
8 the 7-day period following the date Plaintiff signs this Agreement by providing written notice of
9 revocation to Greg S. Labate, Sheppard Mullin Richter & Hampton LLP, 650 Town Center Drive,
10 10th Floor, Costa Mesa, California 92626; email: glabate@sheppardmullin.com, so that said
11 revocation notice is received before the expiration of the 7-day revocation period. In the event of a
12 revocation by Plaintiff pursuant to this paragraph, and if Defendant chooses not to rescind this
13 Agreement in its entirety, the Agreement shall remain fully effective in all other respects; however,
14 the Service Award to Plaintiff shall be reduced by Four Thousand Dollars and Zero Cents
15 (\$4,000.00), attributable to the ADEA claim.

16 6.4 Release and Waiver of Claims By PAGA Members

17 Upon the Effective Date, subject to Defendant's payment of the Settlement Amount, and by
18 operation of the Final Approval Order, Plaintiff, the LWDA, and each and all PAGA Members, on
19 behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be
20 deemed to have fully and finally released and discharged the Released Parties, and each of them, of
21 any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt
22 position which arose at any time during the PAGA Period that have been or may be asserted under
23 PAGA seeking civil penalties.

24 7. **NOTICE AND OPPORTUNITY TO OPT OUT OR OBJECT**

25 7.1 Notice to the Class

26 The Parties submit a Notice of Class Action Settlement ("Class Notice"), in the form
27 attached hereto as "Exhibit 1," to the Court for approval. The Class Notice will include,
28 nonexclusively, information regarding the nature of the Action; a summary of the substance of the

1 Settlement; the definition of the Class and PAGA Members; the formula used to determine the
2 Individual Settlement Payments for the Participating Class Members and Individual PAGA
3 Payments for PAGA Members; the number of Workweeks and PAGA Workweeks credited to each
4 Class Member and PAGA Member, respectively; the estimated Individual Settlement Payment
5 and/or Individual PAGA Payment; the procedures and deadlines for objecting to the Settlement,
6 seeking exclusion from the Settlement (except PAGA Members shall have no right to exclude
7 themselves from the PAGA portion of the Settlement), and/or disputing the number of Workweeks
8 or PAGA Workweeks credited to them; and the date for the Final Approval Hearing.

9 To determine the estimated Individual Settlement Payment for each Class Member for
10 purposes of the Notice, the Settlement Administrator will divide each Class Member's respective
11 Workweeks by the total workweeks worked by all Class Members during the Class Period, and will
12 multiply the resulting figure by the Net Settlement Amount. To determine the estimated Individual
13 PAGA Payment for each PAGA Member, the Settlement Administrator will divide each PAGA
14 Member's respective PAGA Workweeks by the total workweeks worked by all PAGA Members
15 during the PAGA Period, and will multiply the resulting figure by the portion of the PAGA
16 Payment (\$6,250.00) allocated to PAGA Members.

17 7.2 Mailing of the Class Notice

18 Within twenty one (21) calendar days following notice by Plaintiff or the Court of the
19 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class
20 List and Data in readable Microsoft Excel spreadsheets. The Class List and Data shall not be
21 shared with Class Counsel.

22 Within fifteen (15) calendar days after the Settlement Administrator's receipt of the Class
23 List and Data, the Settlement Administrator shall mail the Class Notice to the Class Members via
24 first-class regular U.S. mail. Class Members will have forty-five (45) calendar days from the
25 mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion (as defined
26 below), dispute, or objection. The date of initial mailing of the Class Notice by the Settlement
27 Administrator to the Class Members is the "Initial Mailing." Prior to mailing the Class Notice to
28 Class Members, the Settlement Administrator will perform one search based on the National

1 Change of Address Database information to update and correct the Class List and Data for any
2 known or identifiable address changes.

3 If, within thirty (30) calendar days of the Initial Mailing, a Class Notice is returned with a
4 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
5 the Settlement Administrator shall forward the original Class Notice to the updated address via
6 first-class regular U.S. mail indicating on the Class Notice the date of such re-mailing. If a Class
7 Notice is returned within thirty (30) calendar days of the Initial Mailing as undeliverable without a
8 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
9 the Settlement Administrator will promptly attempt to determine the correct address using a skip-
10 trace search, and will perform a single re-mailing to any addresses located indicating the date of the
11 re-mailing on the Class Notice. Those Class Members who receive a re-mailed Class Notice (as a
12 result of the Settlement Administrator locating an updated address by way of skip-trace search,
13 forwarding address provided by the post office, or request from the Parties or Class Members), will
14 have the later of (a) fifteen (15) calendar days from the date the Class Notice is re-mailed or (b) the
15 Response Deadline to postmark a Request for Exclusion, objection, or dispute regarding
16 Workweeks or PAGA Workweeks to the Settlement Administrator (“Extended Response
17 Deadline”).

18 In the event that the procedures in this Section are followed and the intended recipient of a
19 Class Notice still does not receive the Class Notice, the intended recipient shall be bound by all
20 terms of the Settlement and any Final Approval Order and Final Judgment entered by the Court if
21 the Settlement is approved by the Court. In the event the procedures in this Section are followed
22 and a Class Member does not ultimately return a Request for Exclusion and/or the Request for
23 Exclusion is rejected by the Settlement Administrator, the Class Member shall be deemed a
24 Participating Class Member and will be bound by all terms of the Settlement and any Final
25 Approval Order and Final Judgment entered by the Court if the Settlement is approved by the
26 Court.

1 7.3 Objection to the Settlement

2 A Participating Class Member may object to the Settlement. To assert an objection to the
3 Settlement, a Participating Class Member must submit an objection to the Settlement Administrator
4 by first class U.S. mail at the address specified on the Class Notice, not later than the Response
5 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The date
6 of the postmark will be the exclusive means for determining whether an objection has been timely
7 submitted. All objections must be in writing, which includes: (1) the objector's full name, address,
8 last four digits of his or her Social Security number, and signature; (2) the case name and number;
9 (3) the factual and legal basis, with supporting documents, if any, on which the objection is based;
10 (4) whether the objector is represented by an attorney and providing the contact information of any
11 such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. The
12 Parties agree that the Settlement Administrator shall not disclose the last four digits of any
13 objecting Class Member's Social Security number to anyone but the Parties, that such information
14 will be securely held, and that the disclosure of those last four digits to the Parties shall not be used
15 for any purpose except to ascertain the identity of the objector for administration of this Settlement.
16 Any person who fails to timely submit their written objections in the manner specified above may
17 still appear and object at the Final Approval Hearing. If a Participating Class Member objects to
18 this Settlement, the Participating Class Member will remain a member of the Class for Settlement
19 purposes, and if the Court grants final approval of the Settlement, he or she will be bound by the
20 terms of the Settlement and any Final Approval Order and Final Judgment. Within three (3)
21 business days of receipt of an objection, the Settlement Administrator shall provide counsel for the
22 Parties with a copy of the objection. No later than fourteen (14) calendar days before the Final
23 Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a
24 complete list of Participating Class Members who have submitted an objection. Prior to the Final
25 Approval Hearing, the Settlement Administrator shall submit copies of the objections that it has
26 received, to the Court by way of declaration.

1 7.4 Request for Exclusion from the Settlement

2 Class Members who wish to exclude themselves from the Settlement must submit a valid
3 and timely request for exclusion (“Request for Exclusion”) to the Settlement Administrator by mail,
4 postmarked on or before the Response Deadline or, in the instance of a re-mailed Class Notice, the
5 Extended Response Deadline. The date of the postmark on the return mailing envelope will be the
6 exclusive means for determining whether a Request for Exclusion has been timely submitted. A
7 Request for Exclusion must be in writing which contains: (1) the Class Member’s full name, current
8 address, last four digits of his/her Social Security number; (2) the case name and number; (3) a clear
9 statement that the Class Member wishes to be excluded from the Settlement; and (4) the Class
10 Member’s signature and the date of signature. With respect to Class Members who submit a
11 Request for Exclusion, the Parties agree that the Settlement Administrator shall not disclose the last
12 four digits of any such Class Member’s Social Security number to anyone but the Parties, that such
13 information will be securely held, and that the disclosure of those last four digits to the Parties shall
14 not be used for any purpose except to ascertain the identity of the individual who wishes to exclude
15 himself or herself from the Settlement for administration of this Settlement. The name and last four
16 digits of the Social Security number provided by the Class Member on the Request for Exclusion
17 must match Defendant’s records as provided to the Settlement Administrator, or match Defendant’s
18 records for that particular Class Member. The name and Social Security number provided by the
19 Class Member will be deemed to match Defendant’s records only if: (1) both the first name and the
20 last name and the last four digits of the Social Security number provided by the Class Member
21 match Defendant’s records; (2) the first name and the last four digits of the Social Security number
22 provided by the Class Member match Defendant’s records and it appears the last name has been
23 changed as a result of a change in marital status or is a shortened or lengthened version of the name
24 that appears in Defendant’s records; or (3) the last four digits of the Social Security number and last
25 name match Defendant’s records and the first name provided is either a nickname or a shortened or
26 lengthened version of the name that appears in Defendant’s records. Each Class Member who does
27 not submit a Request for Exclusion in compliance with this paragraph will be deemed to be a
28 Participating Class Member. Participating Class Members will be bound by all terms of the

1 Agreement and the Final Approval Order and Final Judgment. Any Class Member who submits a
2 timely, valid Request for Exclusion will not be a Participating Class Member, will not be entitled to
3 receive any Individual Settlement Payment, and will not be bound by this Agreement or have any
4 right to object, appeal, or comment thereon; provided, however, that the Parties agree there is no
5 statutory or other right for any Class Member or PAGA Members to opt out or otherwise exclude
6 himself or herself from the PAGA portion of the Settlement. A Class Member who submits a valid
7 and timely Request for Exclusion and who is also a PAGA Member shall still receive his or her
8 Individual PAGA Payment and shall be bound by the release of the PAGA claims during the PAGA
9 Period.

10 No later than thirty (30) calendar days before the Final Approval Hearing, the Settlement
11 Administrator shall provide counsel for the Parties with a complete list of all Class Members who
12 have submitted a valid and timely Request for Exclusion.

13 If a Class Member submits both a Request for Exclusion and written objection to the
14 Settlement Administrator prior to the Response Deadline, the Settlement Administrator will first
15 attempt to contact the Class Member(s) to determine if they intended to submit only the Request for
16 Exclusion or written objection. If the Settlement Administrator is unable to contact the Class
17 Member(s) within ten (10) calendar days of receiving both the Request for Exclusion and written
18 objection or if the Class Member(s) fails to respond to the Settlement Administrator within ten (10)
19 calendar days of being contacted, then only the Request for Exclusion will be deemed valid. The
20 Class Member(s)' written objection will be invalid, and the Class Member will no longer be
21 considered a Participating Class Member, will not receive his or her Individual Settlement Payment,
22 and will not be bound by the release of Released Claims (but will still have fully and finally
23 released and discharged the Released Parties of all Released Claims arising during the PAGA
24 Period that may be asserted under PAGA).

25 7.5 No Solicitation of Objections to or Exclusions from the Settlement

26 The Parties agree to use their best efforts to carry out the terms of this Agreement. At no
27 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
28 to submit Requests for Exclusion, objections to the Settlement, or appeal from or seek review of the

1 Court's Preliminary Approval Order, Final Approval Order, or Final Judgment, provided, however,
2 that Class Counsel may respond to any questions received from Class Members regarding the
3 Settlement and this Agreement.

4 8. **DEFENDANT'S RIGHT TO RESCIND**

5 If either (i) 10% or more of the Class Members, or, (ii) a number of Class Members whose
6 Individual Settlement Payments in the aggregate are 10% or more of the Settlement Amount, either
7 opt out of and/or object to the Settlement, or if both (i) and (ii) occur, Defendant may, at its
8 election, rescind the Settlement and all actions taken in its furtherance of it will be thereby null and
9 void. If Defendant exercises this right of recession, it must do so in writing, sent to Class Counsel
10 by email to attorneys@gaineslawfirm.com and overnight mail, addressed to: Daniel Gaines of
11 Gaines & Gaines, APLC, 4550 East Thousand Oaks Blvd., Ste. 100, Westlake Village, CA 91362.
12 If the option to rescind is exercised, Defendant must exercise it no later than five (5) court days
13 prior to the Final Approval Hearing, and Defendant shall be solely responsible for all Settlement
14 Administration Costs accrued to that point. If such provision is exercised, the Action will return to
15 its pre-settlement litigation posture.

16 9. **DISPUTES REGARDING WORKWEEKS**

17 The Class Notice mailed to each Class Member will indicate the Workweeks and PAGA
18 Workweeks credited to each Class Member and the estimated Individual Settlement Payment and/or
19 Individual PAGA Payment that he/she is to receive based upon Defendant's records and the
20 formula set forth in Section 10 below. If a Class Member disputes the Workweeks and/or PAGA
21 Workweeks credited to him or her, as stated in the Class Notice, the Class Member must submit
22 written correspondence to the Settlement Administrator that is postmarked no later than the
23 Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response
24 Deadline, explaining the basis for the dispute and including any supporting documentation showing
25 that the Workweeks and/or PAGA Workweeks credited to him or her is inaccurate. Defendant's
26 records will be presumed determinative, absent credible evidence to rebut the accuracy of the
27 Workweeks and/or PAGA Workweeks credited to a Class Member based thereon. The Settlement
28 Administrator will evaluate the evidence submitted by the Class Member and make a

1 recommendation to the Parties as to which figures should be applied. If the Parties disagree with
2 the Settlement Administrator's recommendation, the dispute will be presented to the Court for
3 determination.

4 10. **COMPUTATION AND DISTRIBUTION OF PAYMENTS**

5 10.1 Settlement Amount

6 The Settlement Amount has been agreed to by the Parties, based on analysis and assessment
7 of the value of the claims of the Class, and, other than the employer portion of payroll taxes, the
8 Settlement Amount is the maximum amount that Defendant agreed to pay with respect to the
9 Settlement. It is expressly understood that if the Court awards less than the total amounts requested
10 to be awarded for Attorneys' Fees, Litigation Costs and Expenses, PAGA Payment, Settlement
11 Administration Costs, and/or Service Award to Plaintiff, or as otherwise provided herein, the
12 difference in any such amounts will be added to the Net Settlement Amount.

13 10.2 Distribution to the Participating Class Members

14 Individual Settlement Payments to be made to Participating Class Members will be
15 determined as follows: The Settlement Administrator will calculate the total number of Workweeks
16 worked by all Participating Class Members during the Class Period ("Total Workweeks"). To
17 determine the Individual Settlement Payment for each Participating Class Member, the Settlement
18 Administrator will (1) divide each Participating Class Member's respective Workweeks by the
19 Total Workweeks, and (2) multiply the resulting figure by the Net Settlement Amount. The
20 Individual Settlement Payment will be reduced by any required legal deductions for each
21 Participating Class Member, provided that such legal deductions will not include the employer's
22 share of any payroll taxes, as set forth in Section 1.27 above.

23 Participating Class Members will have one hundred eighty (180) calendar days from the
24 date on which the Individual Settlement Payment and/or Individual PAGA Payment check is issued,
25 to cash or deposit such check(s). If an Individual Settlement Payment and/or Individual PAGA
26 Payment check is not cashed or deposited within ninety (90) calendar days after mailing, the
27 Settlement Administrator will send a reminder postcard indicating that unless the check is cashed or
28 deposited within the original 180 day check cashing period, the check(s) will expire and become

1 non-negotiable, and offering to replace the check(s) if it was lost or misplaced. If any checks remain
2 uncashed or not deposited by the expiration of the 180 day check cashing period, the Settlement
3 Administrator will, within two hundred (200) calendar days after the checks are initially mailed,
4 cancel the check(s), and pay the amount of the Individual Settlement Payment(s) and/or Individual
5 PAGA Payment(s) to the Parties' chosen *cy pres*, UNICEF USA (or as otherwise ordered by the
6 Court), under Code of Civil Procedure § 384.

7 10.3 Service Award to Plaintiff

8 Plaintiff will apply to the Court for a service award of no more than \$4,500.00 (the "Service
9 Award"), to be paid out of the Settlement Amount. Defendant will not oppose such an application,
10 so long as it is consistent with the provisions of this Agreement. Plaintiff shall be solely and legally
11 responsible to pay any and all applicable taxes on the Service Award and shall hold harmless the
12 Released Parties from any claim or liability for taxes, penalties or interest arising as a result of the
13 payment. Plaintiff is solely responsible for providing a completed IRS W-9 form to the Settlement
14 Administrator prior to distribution. The Settlement Administrator will issue to Plaintiff an IRS
15 Form 1099 reflecting the Service Award.

16 10.4 PAGA Payment

17 The Parties agree to allocate the amount of \$25,000.00 from the Settlement Amount
18 pursuant to PAGA as the PAGA Payment. Seventy-five percent (75%) of this amount, or
19 \$18,750.00, will be paid to the LWDA and twenty-five percent (25%) of this amount, or \$6,250.00,
20 will be distributed to PAGA Members. The portion of the PAGA Payment (\$6,250.00) distributed
21 to PAGA Members shall be calculated and distributed on a pro rata basis based on PAGA
22 Members' respective number of PAGA Workweeks during the PAGA Period. The Settlement
23 Administrator will (1) divide each PAGA Member's PAGA Workweeks by the total number of
24 workweeks worked by all PAGA Members during the PAGA Period, and (2) multiple the resulting
25 figure by the portion of the PAGA Payment (\$6,250.00) allocated to PAGA Members in order to
26 yield each PAGA Member's Individual PAGA Payment.

27 In the event that the Court finds the Parties' allocation of proceeds from the Settlement
28 Amount to PAGA to be insufficient, the Parties expressly reserve the right to amend this Agreement

1 to increase the allocated amount to a level that satisfies the Court's discretion, but provided that
2 such increase does not increase the Settlement Amount.

3 10.5 Attorneys' Fees and Litigation Costs and Expenses

4 Class Counsel shall be entitled to apply to the Court for attorneys' fees payable to Class
5 Counsel in the amount of up to 33-1/3% of the Settlement Amount, which is estimated to be
6 \$96,666.67 ("Attorneys' Fees"), and litigation costs and expenses in an amount not to exceed
7 \$20,000.00 ("Litigation Costs and Expenses"). The amounts set forth above for Attorneys' Fees
8 and Litigation Costs and Expenses will cover all work performed and all fees and costs incurred by
9 Class Counsel to date, and all work to be performed and all fees to be incurred in connection with
10 the litigation of the Action, seeking preliminary and final approval by the Court of this Settlement
11 and Agreement, the administration of the Settlement, seeking and obtaining a Preliminary Approval
12 Order and Final Approval Order, and obtaining Final Judgment. Class Counsel is solely
13 responsible for providing completed IRS W-9 forms to the Settlement Administrator prior to
14 distribution. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel
15 reflecting the awarded Attorneys' Fees and Litigation Costs and Expenses. Should Plaintiff and/or
16 Class Counsel request a lesser amount for Attorneys' Fees and/or the Court approves a lesser
17 amount, the difference between the lesser amount and the requested 33-1/3% (estimated to be
18 \$96,666.67) will be a part of the Net Settlement Amount. Should Plaintiff and/or Class Counsel
19 request a lesser amount for its Litigation Costs and Expenses and/or the Court approves a lesser
20 amount, the difference between the lesser amount and \$20,000.00 will be added to the Net
21 Settlement Amount. Class Counsel will not be permitted to petition the Court for, or accept, any
22 additional payments from Defendant for attorneys' fees, costs, or expenses in connection with the
23 Action. Class Counsel shall assume full responsibility and liability for the payment of taxes due on
24 such awards.

25 Defendant's payment of the Attorneys' Fees and Litigation Costs and Expenses awarded to
26 Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person,
27 attorney, or law firm for attorneys' fees, costs, or expenses in the Action incurred by any attorney
28 on behalf of the Plaintiff, the Class Members, and the PAGA Members, and shall relieve

1 Defendant, the Settlement Administrator, and Defendant's counsel of any other claims or liability to
2 any other attorney or law firm for any attorneys' fees, costs, and expenses to which any of them
3 may claim to be entitled on behalf of Plaintiffs and/or the Class Members and PAGA Members.

4 10.6 Settlement Administrator

5 Subject to approval by the Court, the Parties agree that the fees and expenses of the
6 Settlement Administrator in relation to services rendered in administration of the Settlement of the
7 Action shall be deducted from the Settlement Amount, not to exceed \$10,000.00 ("Settlement
8 Administration Costs"), absent approval of the Court for a greater amount. If the Settlement
9 Administrator's actual costs are lower than, or the Court awards less than the total amount allocated
10 for Settlement Administration Costs, the difference in any such amounts will be a part of the Net
11 Settlement Amount.

12 The Settlement Administrator shall have the authority to mail the Class Notice; establish a
13 qualified settlement fund account and administer the Settlement Amount; and disburse funds from
14 the Settlement Amount in accordance with this Agreement. The Settlement Administrator shall
15 calculate the Individual Settlement Payments to be paid to the Participating Class Members in
16 accordance with the terms and provisions of this Agreement; calculate the Individual PAGA
17 Payments to be paid to PAGA Members in accordance with the terms and provisions of this
18 Agreement; distribute the Class Notice; determine eligibility for payment to a Class Member or
19 PAGA Member; resolve any disputes regarding the Workweeks and/or PAGA Workweeks credited
20 to each Class Member and/or PAGA Member; keep track of those Class Members requesting to be
21 excluded from the Settlement, and provide information regarding objections and Requests for
22 Exclusion to the Parties' counsel; mail the Individual Settlement Payment checks to Participating
23 Class Members and Individual PAGA Payment checks to PAGA Members; undertake require tax
24 withholdings and reporting; and perform such other tasks necessary to effectuate the terms of this
25 Agreement or as the Parties mutually agree or the Court orders the Parties to perform. The
26 Settlement Administrator shall regularly report to the Parties, in written form, the substance of the
27 work performed.

1 The Settlement Administrator will submit to the Court, in conjunction with the motion for
2 final approval, a declaration providing, among other things, the number of Class Notices it mailed
3 to the Class Members, the number of Class Notices that it re-mailed, the number of Class Notices
4 that were ultimately undeliverable, the number of Requests for Exclusion and objections that it
5 received, the number of defective Requests for Exclusion and objections that it received, the total of
6 its charges for services rendered, and the anticipated future charges contemplated in order to bring
7 the administration of the Settlement and distribution of payments to completion.

8 Any disputes relating to the Settlement Administrator's ability and need to perform its
9 duties shall be referred to the Court.

10 10.7 Time for Funding of the Settlement

11 Prior to the Effective Date of the Settlement, Defendant will not be required to fund the
12 Settlement, in whole or in part, through the Settlement Administrator or any third party. Within
13 twenty one (21) calendar days after the Effective Date, Defendant shall provide the Settlement
14 Administrator with sufficient funds to make all the payments required under this Settlement.

15 10.8 Time for Distribution

16 Within 30 calendar days after receipt of the Settlement Amount from Defendant, the
17 Settlement Administrator shall make the following payments as approved by the Court:
18 (1) Individual Settlement Payments to Participating Class Members; (2) Individual PAGA
19 Payments to PAGA Members; (3) the Service Award; (4) the Attorneys' Fees; (5) the Litigation
20 Costs and Expenses; (6) payment to the LWDA of the LWDA portion of the PAGA Payment; and
21 (7) the Settlement Administration Costs.

22 10.9 End of Class Period and PAGA Period

23 In connection with Mediation, that took place on July 26, 2023, Defendant estimated that
24 as of May 11, 2023, there were approximately 33,000 weeks worked by Class Members. The
25 Parties agree that the Class Period and PAGA Period will end on the date when the number of
26 workweeks worked by Class Members reaches 37,950 workweeks (counting from July 21, 2018).
27 37,950 workweeks is fifteen percent (15%) more than the 33,000 workweeks estimated to have
28 been worked by Class Members when the Parties attended Mediation.

1 10.10 Allocation

2 All Individual Settlement Payments will be allocated as follows: 50% as wages (“wage
3 portion”) and 50% as penalties, any other non-taxable items, and interest. The wage portion of each
4 Individual Settlement Payment will be subject to W-2 reporting and, therefore, normal employee’s
5 share of payroll taxes and withholdings will be deducted pursuant to applicable state and federal
6 law. Defendant shall be responsible for paying employer-side taxes separately from the Settlement
7 Amount. Participating Class Members will be issued an IRS Form 1099 for the portion of their
8 Individual Settlement Payments that is treated as interest and penalties and any other non-taxable
9 items and will assume full responsibility and liability for the payment of taxes due on such awards,
10 if any. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA
11 Members will be issued an IRS Form 1099 for their Individual PAGA Payment and will assume full
12 responsibility and liability for the payment of taxes due on such awards, if any. The Parties make
13 no representations about the tax consequences to the portion of the Individual Settlement Payments
14 representing interest and penalties.

15 11. INTEREST

16 The Settlement Amount includes any and all interest accruals and no additional interest shall
17 be due under any circumstances.

18 12. TAXATION

19 12.1 It is the sole obligation of Plaintiff, each of the Participating Class Members, and
20 each of the PAGA Members to pay appropriate federal, state, and local income taxes on any
21 amounts they receive under this Agreement that lawfully qualify as taxable income.

22 12.2 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR
23 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
24 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
25 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
26 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
27 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
28 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE

1 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
2 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
3 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
4 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
5 ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
6 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
7 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
8 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
9 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
10 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
13 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
14 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
17 AGREEMENT.

18 13. **COURT APPROVAL**

19 13.1 Following the Preliminary Approval Order, if Defendant does not exercise its right
20 to cancel the Settlement solely as provided for herein, a motion for final approval of the
21 Settlement will be filed by Class Counsel, which, if not separately filed by Class Counsel, will
22 include a request for Attorneys' Fees, Litigation Costs and Expenses, and Service Award as
23 provided for herein, which Defendant will not oppose. The Parties agree to take all steps as may
24 be reasonably necessary to secure final approval of the Settlement as quickly as possible, to the
25 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
26 each other in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in
27 all respects.

28

1 13.2 If the Court does not grant preliminary approval and/or final approval of the
2 Settlement, or if the Court's Final Approval Order and Final Judgement are reversed or materially
3 modified on appeal, then this Settlement will become null and void.

4 13.3 In the event the Court declines to enter the Final Approval Order and Final
5 Judgment, this Agreement shall be null and void and any order or judgment entered by the Court
6 in furtherance of this Agreement shall be treated as void. In such a case, the Parties and any funds
7 to be awarded under this Settlement shall be returned to their respective statuses as of the date and
8 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
9 respects as if this Agreement had not been executed, except that any fees and expenses already
10 reasonably incurred by the Settlement Administrator shall be paid by Defendant.

11 14. **MISCELLANEOUS PROVISIONS**

12 14.1 No Effect on Regular Rate or Overtime Compensation

13 Participating Class Members and PAGA Members will receive payment under the
14 Settlement, as determined by the Settlement Administrator in accordance with this Agreement. The
15 Parties agree that this payment is not viewed as additional compensation for purposes of calculating
16 a "regular rate" of pay under California or federal law for the period during which it is received, and
17 no additional overtime compensation is required as a result of such payment; further, any claim to
18 entitlement to any additional overtime compensation is expressly waived under the terms of this
19 Agreement. No person or entity shall have any claim against Defendant, Defendant's Counsel,
20 Plaintiff, any Class Members or PAGA Members, Class Counsel, or the Settlement Administrator
21 based upon distributions and payments made in accordance with this Agreement.

22 14.2 No Effect on Employee Benefits

23 The Individual Settlement Payments and/or Individual PAGA Payments to be paid to
24 Plaintiff, Participating Class Members, and PAGA Members, and the Service Award to be paid to
25 Plaintiff, shall be deemed not to be pensionable earnings and shall not have any effect on the
26 eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay,
27 retirement plans, etc.) of Plaintiff, any Participating Class Members, or any PAGA Members. Such
28 payments do not represent any modification of Plaintiff's, Participating Class Members', or PAGA

Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Individual Settlement Payment, Individual PAGA Payment, or Service Award shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

14.3 Headings

The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

14.4 Final Agreement

This Agreement constitutes the exclusive and final understanding and expression of all agreements between the Parties with respect to the resolution of the Action, and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. Plaintiff, on behalf of herself and on behalf of the Class Members, PAGA Members, and LWDA, and Defendant enter into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement.

14.5 Amendment or Modification

This Agreement may be amended or modified only by a written instrument signed by counsel for the Parties, or their successors, and approved by the Court.

14.6 Counterparts/Facsimile

This Agreement may be executed in one or more actual or telecopied counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. A signature by facsimile or DocuSign on this Agreement shall be as legally binding as an original signature.

14.7 Authority

Counsel for all Parties represent and warrant they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to

1 execute any other documents required to effectuate the terms of this Agreement. The Parties and
2 their counsel will cooperate with each other and use their best efforts to effectuate the
3 implementation of the Settlement. In the event that the Parties are unable to reach agreement on
4 the form or content of any document needed to implement the Settlement, or on any supplemental
5 provisions that may become necessary to effectuate the terms of the Settlement, the Parties shall
6 seek the assistance of the Court to resolve such disagreement. The person signing this Agreement
7 on behalf of Defendant represents and warrants that she is authorized to sign this Agreement on its
8 behalf.

9 14.8 Binding on Successors and Assigns

10 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
11 of the Parties hereto, as previously defined.

12 14.9 Interim Stay of Proceedings.

13 The Parties agree to stay and hold all proceedings in the Action in abeyance, except such
14 proceedings necessary to implement and complete the Settlement, pending the Final Approval
15 Hearing to be conducted by the Court.

16 14.10 Fair, Adequate, and Reasonable Settlement.

17 The Parties and their respective counsel believe and warrant that this Agreement reflects a
18 fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through
19 arm's-length negotiations, considering all relevant factors, current and potential.

20 14.11 Cooperation and Drafting

21 Each of the Parties has cooperated in the drafting and preparation of this Agreement.
22 Hence, in any construction made to this Agreement, the same shall not be construed against any of
23 the Parties.

24 14.12 Invalidity of Any Provision

25 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
26 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
27 as to define all provisions of this Agreement as valid and enforceable.

28

1 14.13 Plaintiff's Waiver of Right to Be Excluded

2 By signing this Agreement, Plaintiff is bound by the terms herein stated and further agrees
3 not to submit a Request for Exclusion from the Settlement. Any such Request for Exclusion shall
4 therefore be void and of no force or effect. Plaintiff also agrees to not disparage the Settlement to
5 Class Members or PAGA Members or encourage, in any way, Class Members to submit or not to
6 submit a Request for Exclusion. In addition, neither Plaintiff nor Class Counsel will initiate any
7 contact with Class Members or PAGA Members about the amount or terms of the Settlement.

8 14.14 Publicity

9 Plaintiff and Class Counsel, and each of them, agree that they (i) will keep the fact, amount
10 or terms of the Settlement strictly confidential (except as required by law or Court order and only
11 until such time as the Settlement becomes a matter of public record); (ii) will not issue any press
12 releases, initiate any contact with the press, respond to any press inquiry or have any
13 communication with the press about the fact, amount or terms of the Settlement; and (iii) will not
14 engage in any advertising or distribute any marketing materials that disclose or mention the fact,
15 amount or terms of the Settlement of this case, including but not limited to any postings on any
16 websites maintained by Class Counsel; provided, however, that following the filing of preliminary
17 approval papers, (i) Plaintiff and Class Counsel may respond to (but not initiate) press inquiries by
18 stating only that the matter has been resolved and referring the press to court filings; and (ii) Class
19 Counsel may post the preliminary approval papers on their website solely to provide information
20 about the Settlement to the Class and can communicate with the Class about the Settlement. This
21 paragraph does not preclude referring any third party to Court filings. At all times, though, the
22 Plaintiff and Class Counsel remain bound by Section 7.5 above.

23 14.15 Defense

24 To the extent permitted by law, this Settlement may be plead as a full and complete defense
25 to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that
26 may be instituted, prosecuted, or attempted with respect to the Released Claims against the
27 Released Parties in breach of or contrary to the Settlement.
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14.16 Final Judgment

The Parties agree that, upon final approval of the Settlement, a Final Judgment will be made and entered, resolving the Action in its entirety.

WHEREFORE, Plaintiff, on behalf of herself, the Participating Class Members, PAGA Members, and LWDA, and Defendant, have executed this Agreement as of the dates set forth below.

Executed on: 08 / 02 / 2024



PLAINTIFF GABRIELA BUSTAMANTE

Executed on: 08/05/24



DEFENDANT MARRIOTT HOTEL SERVICES, INC. (*now known as* MARRIOTT HOTEL SERVICES, LLC)

GAINES & GAINES, APLC

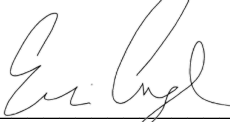
Executed on: 8/2/2024



DANIEL GAINES
ALEX KATOFISKY
For Plaintiff Gabriela Bustamante and the Class

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Executed on: 8/5/24



GREG S. LABATE
ERIC T. ANGEL
For Defendants Marriott Hotel Services, Inc. (*now known as* Marriott Hotel Services, LLC)

EXHIBIT 1

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
CLASS ACTION SETTLEMENT HEARING**

IMPORTANT LEGAL NOTICE

This is not an advertisement

Bustamante v. Marriott Hotel Services, Inc.

Superior Court for the County of Santa Clara, Case No. 22CV400968

**THIS NOTICE IS BEING SENT AS PART OF A SETTLEMENT FROM A COURT AND CONTAINS
IMPORTANT INFORMATION THAT MAY AFFECT YOU**

YOU ARE NOT BEING SUED

TO: ALL PERSONS EMPLOYED BY MARRIOTT HOTEL SERVICES, INC. (*now known as* MARRIOTT HOTEL SERVICES, LLC) AS A NON-EXEMPT EMPLOYEE AT THE MONTEREY MARRIOTT IN CALIFORNIA FOR ANY PORTION OF TIME BETWEEN JULY 21, 2018 AND NOVEMBER 24, 2023 (THE “CLASS MEMBERS”)

1. Why Did I Receive This Notice?

A proposed settlement has been reached in a lawsuit that may affect your rights.

This lawsuit is against Marriott Hotel Services, Inc. (*now known as* Marriott Hotel Services, LLC) (referred to in this notice as “Defendant”). Gabriela Bustamante is a former employee of Defendant at the Monterey Marriott in California. She filed this lawsuit. This notice refers to Ms. Bustamante as “Plaintiff.”

You are receiving this notice because Defendant’s records indicate that you worked for Defendant at the Monterey Marriott in California as a non-exempt employee for some time between July 21, 2018 and November 24, 2023 (“Class Period”). This means you are a potential Class Member, and you have a right to know about the proposed settlement. This notice explains the lawsuit, the proposed settlement, your legal rights, what payments may be available, and how to get them.

2. What Is the Lawsuit About?

Plaintiff filed a proposed class action lawsuit on behalf of herself and other Class Members. Plaintiff claims that Defendant violated California law by:

- (1) failing to pay all wages due;
- (2) failing to provide legally required rest periods;
- (3) failing to provide legally required meal periods;
- (4) failing to provide accurate wage statements;
- (5) failing to pay wages due at separation of employment;
- (6) violating Business and Professions Code § 17200 *et seq.*; and
- (7) violating the Private Attorneys General Act of 2004 (“PAGA”)

Plaintiff sought unpaid wages, interest, and penalties, as well as attorneys’ fees and costs for Class Members. Defendant denies each and every one of Plaintiff’s allegations, and believes that it has treated, and continues to treat, Class Members in accordance with all applicable laws at all times. The Court has not made any decision on whether the claims in this lawsuit have merit or not.

3. What Is a Class Action?

A class action lawsuit is a legal proceeding where one or more persons sue not just for themselves, but for other people who have similar claims (forming a “class” or group of people).

4. Background of Settlement

The claims in this case are contested. Defendant denies that it committed any wrongdoing. Plaintiff’s lawyers have received sufficient information from Defendant in order to evaluate the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses and reached a settlement with Defendant after extensive arm’s-length negotiations. The Court did not decide in favor of Plaintiff or Defendant.

Plaintiff and her lawyers believe the settlement is in the best interests of the Class Members considering the uncertain outcome, and the risks, costs, and time involved in further litigation, trial, and possible appeals.

5. What Are the Terms of the Proposed Settlement?

Defendant has agreed to pay a total of Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) (the “Settlement Amount”) to settle this case. This money will be divided among all Class Members. It will also be used to pay approximately \$96,666.67 in Plaintiff’s lawyers’ fees and no more than \$20,000 for Plaintiff’s lawyers’ costs of litigation, a payment in the amount of \$18,750.00 to the State of California Labor Workforce Development Agency for its share of penalties under PAGA, payment to the Plaintiff in the amount of \$4,500 for her service to the Class, and payment not to exceed \$10,000 to the Settlement Administrator for calculating and distributing payments.

6. How Much Will My Settlement Payment Be?

Individual Settlement Payments to Class Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California during the Class Period to the total number of weeks worked by all Class Members during the Class Period.

In addition, Individual PAGA Payments to PAGA Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California between July 21, 2021 and November 24, 2023 (the “PAGA Period”) to the total number of weeks worked by all PAGA Members during the PAGA Period.

More detail on the formula for determining each Class Member’s share and each PAGA Member’s share has been provided to the Court and can be obtained from Class Counsel.

Based on Defendant’s records, you worked ____ workweeks **during the Class Period** and ____ workweeks **during the PAGA Period**.

Based on this data, your *estimated* settlement payment is shown in the chart below. This is just an estimate. Your final share will be determined by the Settlement Administrator.

Member	Time credited as a Class Member and PAGA Member	Your Estimated Share
Class Member	____ WORKWEEKS (During Class Period)	\$INSERT (Individual Settlement Payment)
PAGA Member	____ PAY PERIODS (During PAGA Period)	\$INSERT (Individual PAGA Payment)

For tax reporting purposes, 50% of the Individual Settlement Payment to Class Members will be assigned to wages, which are subject to legally required state and federal withholdings and deductions, reported on a form

W-2, and 50% to penalties, reported on an IRS Form 1099, with no withholding taken. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA Members will be issued an IRS Form 1099 for their Individual PAGA Payment.

7. When Will I Receive My Payment and What Do I Have To Do?

Class Members who do not opt out will be sent their Individual Settlement Payments and Individual PAGA Payments within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

Class Members who opt out of the settlement but who qualify as a PAGA Member, or for those who never were Class Members but are a PAGA Member, your Individual PAGA Payment will be sent within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

You must cash your check within 180 days of when the check is issued. The check will be void after 180 days, and the settlement provides that money will be distributed to UNICEF USA pursuant to California Code of Civil Procedure § 384.

8. What if I Dispute the Information on My Workweeks?

If you believe the information shown above regarding your workweeks is incorrect, you may challenge it with any documents or other supporting evidence sent to the Settlement Administrator. Any challenge must be postmarked by no later than **[THE RESPONSE DEADLINE]**.

The Settlement Administrator will presume that Defendant's records are correct but may change its calculations of your workweeks after considering your evidence. The Settlement Administrator's decision on your time worked is final and binding, meaning that it cannot be appealed.

9. What Are My Legal Rights and Options Under the Settlement?

Do Nothing	If you do nothing, you will receive a payment under the settlement if the Court finally approves the settlement. You will release all claims covered by the settlement. You do not have to do anything to receive a payment.
Exclude Yourself or "Opt Out"	If you do <u>not</u> wish to participate in the settlement or give up your right to sue on the Released Claims (described in Section 15 below), you may "opt-out" of the settlement of the class claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 12 for details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you (1) will <u>not</u> receive an Individual Settlement Payment, (2) will <u>not</u> give up your right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

Object to the Settlement	Any Class Member who does not request to be excluded from the settlement may object to the settlement. If you wish to object, you can do so in writing by stating the basis for your objection(s) or you may appear at the Final Fairness Hearing to object in person. All written objections must include: (1) the objector's full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. To object, you <u>must</u> prepare and complete your objection, <u>sign it</u> and submit it to the Settlement Administrator. Alternatively, a Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. If the Court rejects your objection, you will be bound by the terms of the settlement, including the Released Claims, unless you have submitted a timely request to be excluded. But, Class Members who also qualify as PAGA Members cannot exclude themselves from the release of PAGA claims during the PAGA Period.
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10. What if I Have Questions?

If you have questions, please contact the lawyers for the Class Members or the Settlement Administrator. The Plaintiff's and Class Members' lawyers are:

GAINES & GAINES, APLC
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
(866) 550-0855

DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THE SETTLEMENT OR THE CLAIM PROCESS.

11. Who Is the Settlement Administrator?

The Settlement Administrator is a company hired by the Plaintiff and Defendant to administer the settlement. The Settlement Administrator's contact information is:

Settlement Administrator
ILYM Group Mailing Address Telephone Number

The Settlement Administrator's duties include processing challenges, objections and exclusions, making payments to the Class Members and PAGA Members, tax reporting, and getting answers to any questions you may have. The costs of administering the settlement, which are estimated not to exceed \$10,000, will be deducted from the gross settlement amount.

12. How Do I Opt-Out of the Class Settlement?

You will be treated as a Participating Class Member, participating fully in the settlement, unless you complete and send to the Settlement Administrator a letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number, your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE BUSTAMANTE V. MARRIOTT HOTEL SERVICES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Complete and send the Request for Exclusion directly to the Settlement Administrator at the address in Section 11 above, postmarked on or before **DATE**, 2024.

Any person who submits a valid and timely Request for Exclusion (1) will not receive an Individual Settlement Payment, (2) will not give up his/her right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement.

You cannot opt-out of the PAGA portion of the Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

13. How Will the Lawyers and the Representative for the Class Be Paid?

The lawyers for Plaintiff will request Court approval for payment of attorneys' fees of up to \$96,666.67, plus reimbursement of actual litigation costs up to \$20,000. The Court decides whether or not to award attorneys' fees. The attorneys' fees are for legal services provided, and to be provided, to Plaintiff and the Class.

The lawyers for Plaintiff will also ask the Court to approve a class representative service award of \$4,500 to Plaintiff, for her time and willingness to accept the risks of bringing this case. This award would be in addition to the amount she is owed under the settlement as a Class Member and PAGA Member.

14. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

A Final Fairness Hearing will be held on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Theodore C. Zayner of the Santa Clara County Superior Court, Department D19, located at 161 North First Street, San Jose, California 95113, to determine whether the proposed settlement is fair, reasonable, and adequate. The hearing may be continued without further notice.

You do not need to appear at this hearing unless you wish to object to the settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

15. What Is Being Released as Part of the Settlement?

If the Court gives the settlement final approval, the Class Members who have not opted out will fully release the Released Parties (described below), and each of them, of and from any and all Released Claims arising out of

employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including November 24, 2023. The “Released Claims” are defined as the claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the Second Amended Complaint in the Action or that could have been pleaded or asserted based upon the facts alleged in the Second Amended Complaint in the Action, including but not limited to local, state, and/or federal wage and hour claims, failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at all or at the proper rate of pay; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; unfair business practices; declaratory relief; penalties, including but not limited to PAGA penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys’ fees and costs. The Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the California Industrial Welfare Commission, including but not limited to Wage Order No. 5-2001; PAGA; California Business and Professions Code Section 17200, *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and 11070; California Code of Civil Procedure, including but not limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, *et seq.* The Released Claims also include claims for civil penalties that accrued during the PAGA Period under PAGA to the extent they were alleged or reasonably could have been alleged based on the factual allegations in the PAGA notice filed with the LWDA by Plaintiff or any pleadings filed in the Action by Plaintiff. Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* arising up through and including November 24, 2023 and reasonably related to any or all of the aforementioned claims. However, Released Claims exclude the release of claims not permitted by law.

Further, if the Court gives the settlement final approval, Plaintiff, the LWDA, and each and all PAGA Members, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including November 24, 2023 that have been or may be asserted under PAGA seeking civil penalties.

In addition to releasing the claims just mentioned against Defendant, Class Members who do not opt out, and PAGA Members, will also release claims against each of the Released Parties. The “Released Parties” are Defendant, the owners and operators of the Monterey Marriott, and each of them, and each of their past, present, and future parent companies, subsidiaries, related companies, and affiliates, and their respective shareholders, members, partners, representatives, fiduciaries, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendant, or any of them.

16. Can I Be Retaliated Against for Participating in the Settlement?

The law prohibits Defendant from retaliating against employees for exercising their rights under the law. Therefore, Defendant cannot and will not fire you, demote you, harass you, classify you as ineligible for rehire, or retaliate against you in any other way because you choose to participate, or not participate, in the settlement.

17. Getting More Information about the Settlement

This Notice contains a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Amended and Restated Settlement Agreement” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 161 North First Street San Jose, California 95113. You may also contact the Settlement Administrator by phone at [NUMBER] or Counsel for the Class, Gaines & Gaines, APLC, at (866) 550-0855. Please do not telephone the Court for information about this settlement or the claims process.

IMPORTANT:

- 1. If you move or change your address, send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
- 2. It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**

EXHIBIT C

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFKY, ESQ. SBN 202754
alex@gaineslawfirm.com

~~EVAN S. GAINES, ESQ. SBN 287668~~
~~evan@gaineslawfirm.com~~

GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Gabriela Bustamante,
on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership

Including Professional Corporations
GREG S. LABATE, Cal. Bar No. 149918
glabate@sheppardmullin.com

~~TYLER Z. BERNSTEIN~~ **ERIC T. ANGEL**, Cal. Bar No. ~~296496~~ 293157
~~tbernsteineangel~~@sheppardmullin.com

650 Town Center Drive, 10th Floor
Costa Mesa, California 92626-1993
Telephone: 714.513.5100
Facsimile: 714.513.5130

Attorneys for Defendant MARRIOTT HOTEL
SERVICES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

GABRIELA BUSTAMANTE, on behalf of
herself and all “aggrieved employees” pursuant
to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

MARRIOTT HOTEL SERVICES, INC., a
Delaware corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 22CV400968

Assigned to: Hon. Theodore C. Zayner
Dept.: D19

AMENDED AND RESTATED
SETTLEMENT AGREEMENT

Complaint Filed: July 21, 2022

Trial Date: None Set

1 This Amended and Restated Settlement Agreement is made by and between Plaintiff
2 Gabriela Bustamante (“Plaintiff”), on behalf of herself and each of the Class Members and PAGA
3 Members as defined herein, and Defendant Marriott Hotel Services, Inc. (*now known as* Marriott
4 Hotel Services, LLC), and is intended to resolve and settle the pending action entitled Gabriela
5 Bustamante, et al. v. Marriott Hotel Services, Inc., Case No. 22CV400968 (Santa Clara County
6 Superior Court) (the “Settlement”).

7 RECITALS

8 WHEREAS, on or about November 17, 2023, the Parties fully executed a Settlement
9 Agreement intended to resolve and settle the Action (“Original Agreement”);

10 WHEREAS, the Parties now intend to amend and restate the Original Agreement in its
11 entirety as set forth herein.

12 1. DEFINITIONS

13 1.1 The term “Action” means the action entitled Gabriela Bustamante, et al. v. Marriott
14 Hotel Services, Inc., Case No. 22CV400968 (Santa Clara County Superior Court).

15 1.2 The term “Agreement” refers to this Amended and Restated Settlement Agreement.

16 1.3 The terms “Class” or “Class Members” means all individuals who are or who have
17 been directly employed by Defendant in California at the Monterey Marriott as a non-exempt
18 employee during any portion of the Class Period.

19 1.4 The term “Class Counsel” means Gaines & Gaines, APLC.

20 1.5 The term “Class List and Data” means the name, last known mailing address, Social
21 Security number, number of Workweeks for each Class Member during the Class Period, and
22 number of PAGA Workweeks for each PAGA Member during the PAGA Period.

23 1.6 The term “Class Period” means the time from July 21, 2018 through ~~the date on~~
24 ~~which the Court issues the Preliminary Approval Order, or an earlier date as Defendant may elect~~
25 ~~pursuant to Paragraph 10.9.~~ November 24, 2023, the date when the number of workweeks worked
26 by Class Members since July 21, 2018 reached 37,891.

27 1.7 The term “Court” means the Superior Court of California, County of Santa Clara.
28

1 1.8 The term “Defendant” or “Marriott” means Defendant Marriott Hotel Services, Inc.
2 (*now known as* Marriott Hotel Services, LLC).

3 1.9 The “Effective Date” of the Settlement will be the last to occur of the following:
4 (a) if there are no objections to the Settlement, then the date on which the Court enters the Final
5 Approval Order; (b) if one or more timely objections has/have been filed and not withdrawn, then
6 upon passage of the applicable date for an objector to seek appellate review of the Final Approval
7 Order; or (c) if an appeal, review or writ is sought from the Final Approval Order, the day after the
8 Final Approval Order is affirmed or the appeal, review or writ is dismissed or denied, and the Final
9 Approval Order is no longer subject to further judicial review.

10 1.10 The term “Final Approval Order” means the order of the Court that grants final
11 approval of the Settlement.

12 1.11 The term “Final Judgment” means the final judgment entered by the Court based
13 upon the Settlement.

14 1.12 The term “Individual PAGA Payment” means the PAGA Member’s pro-rata share of
15 the portion of the PAGA Payment allocated to PAGA Members pursuant to Section 10 below.

16 1.13 The term “Individual Settlement Payment” means the amount to be paid to a
17 Participating Class Member from the Net Settlement Amount pursuant to Section 10 below.

18 1.14 The term “Mediator” means Hon. Thierry Colaw (Ret.).

19 1.15 The term “Monterey Marriott” means the hotel located at 350 Calle Principal,
20 Monterey, CA 93940.

21 1.16 The term “Net Settlement Amount” means the Settlement Amount minus the Court-
22 approved Attorneys’ Fees, Litigation Costs and Expenses, Service Award to Plaintiff, Settlement
23 Administration Costs, and PAGA Payment.

24 1.17 The term “PAGA Member(s)” means all individuals who are or who have been
25 employed by Defendant in California at the Monterey Marriott as a non-exempt employee during
26 any portion of the PAGA Period.

27 1.18 The term “PAGA Payment” means the payment made to the LWDA and PAGA
28 Members for civil penalties pursuant to PAGA and the terms of this Agreement.

1.19 The term “PAGA Period” means the time from July 21, 2021 through ~~the date on which the Court issues the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9~~ November 24, 2023, the date when the number of workweeks worked by Class Members since July 21, 2018 reached 37,891.

1.20 The term “PAGA Workweek(s)” refers to the week(s) during the PAGA Period in which a PAGA Member worked for Defendant at the Monterey Marriott.

1.21 The term “Participating Class Members” means Class Members who have not timely requested exclusion from the Settlement.

1.22 The term “Parties” means Plaintiff and Defendant, collectively.

1.23 The term “Party” means Plaintiff or Defendant, individually.

1.24 The term “Plaintiff” means Plaintiff Gabriela Bustamante.

1.25 The term “Preliminary Approval Order” means the order of the Court that grants preliminary approval of the Settlement.

1.26 The term “Settlement Administrator” means ILYM Group, Inc. (“ILYM”), the third-party settlement administrator agreed upon by Parties to administer this Settlement.

1.27 The term “Settlement Amount” means the amount of Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00), inclusive of the Attorneys’ Fees and Litigation Costs and Expenses incurred by Class Counsel, the Settlement Administration Costs, the Service Award to Plaintiff, and the PAGA Payment to the State of California Labor Workforce and Development Agency (“LWDA”) and PAGA Members, but excluding the employer portion of any applicable payroll taxes. ~~The Settlement Amount excludes any pro-rata overages that may be required as set forth in Paragraph 10.9.~~

1.28 The term “Workweek(s)” refers to week(s) during the Class Period in which a Class Member worked for Defendant at the Monterey Marriott.

2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

2.1 On July 21, 2022, Plaintiff initiated the Action by filing a representative action against in this Court against Defendant pursuant to the Private Attorneys General Act of 2004 (“PAGA”). On November 17, 2022, Plaintiff filed her First Amended Complaint against

1 Defendant, which added proposed class claims. On December 16, 2022, Defendant removed the
2 Action to the United States District Court for the Northern District of California.

3 2.2 On July 26, 2023, the Parties participated in private mediation conducted by the
4 Mediator, an experienced and respected former judge (“Mediation”). The settlement discussions
5 were conducted at arm’s length. The Parties reached an impasse at Mediation, but the Mediator
6 successfully assisted the Parties to agree on a resolution of the Action through post-Mediation
7 discussions and negotiations. The Settlement is the result of an informed and detailed analysis of
8 the risks facing all Parties in litigating this case, including but not limited to, careful consideration
9 of the legal and factual obstacles to Plaintiff’s prospects of obtaining class certification and on the
10 merits, and Defendant’s defenses, as well as Defendant’s potential exposure and the additional costs
11 of litigating the Action.

12 2.3 On September 14, 2023, Plaintiff filed her Second Amended Complaint (the
13 operative complaint in the Action), which amended the definition of the putative class to limit the
14 scope to only non-exempt employees of Defendant at the Monterey Marriott, and asserted the
15 following claims against Defendant: (1) Failure to Pay All Wages Due; (2) Failure to Provide Rest
16 Periods or Compensation In Lieu Thereof; (3) Failure to Provide Meal Periods or Compensation In
17 Lieu Thereof; (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage
18 Statement Provisions; (5) Failure to Pay Wages Due at Separation of Employment; (6) Violation Of
19 Business and Professions Code § 17200; and (7) PAGA (“Second Amended Complaint”). Also, on
20 September 14, 2023, this Action was remanded from the United States District Court for the
21 Northern District of California to this Court.

22 2.4 This Agreement is intended to and does effectuate the full, final, and complete
23 resolution of the Action.

24 2.5 The Parties believe that continued litigation would be protracted, expensive, and
25 uncertain, and that this Settlement is in the best interests of the Class, PAGA Members, and
26 Defendant. In light of these realities, the Parties believe that this Settlement is the best way to
27 resolve the disputes between them.
28

1 3. **JURISDICTION, ENFORCEMENT, AND INTERPRETATION**

2 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
3 includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the
4 Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the
5 Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of
6 the terms of this Agreement and all orders and judgments entered in connection therewith, pursuant
7 to California Rules of Court Rule 3.769, *et seq.* and California Code of Civil Procedure Section
8 664.6, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting,
9 implementing, and enforcing the Settlement embodied in this Agreement and all orders and
10 judgments entered in connection therewith. The Parties and their counsel agree that a court, upon
11 motion, may enter judgment pursuant to the Agreement and California Code of Civil Procedure
12 Section 664.6 and the Agreement is admissible in evidence for purposes of enforcement pursuant to
13 California Evidence Code Section 1123. The Agreement will be interpreted and enforced under the
14 laws of the State of California without regard to its conflict of laws provisions. Any dispute arising
15 out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
16 exclusively in the Court, and the Parties hereby consent to the jurisdiction of the Court over them
17 solely in connection therewith.

18 4. **NO ADMISSION WITH RESPECT TO LIABILITY**

19 4.1 The Parties agree that this Agreement reflects their good faith compromise of the
20 Action, based upon their assessment of the mutual risks and costs of further litigation and the
21 assessments of their respective counsel. This Agreement does not constitute, is not intended to
22 constitute, and will not be deemed to constitute, an admission of liability or lack of liability by the
23 Parties as to the merits, validity, or accuracy of any of the allegations or claims made against
24 Defendant in the Action or the appropriateness of class certification. Defendant denies each of
25 Plaintiff's allegations in their entirety and alleges that Plaintiff and all other Class Members and
26 PAGA Members were provided compensation and treated in all respects in accordance with
27 California law with regard to the claims and facts alleged in the Second Amended Complaint.
28

1 4.2 Nothing in this Agreement, nor any action taken or made in implementation thereof,
2 including, without limitation, any statements, discussions, communications, or any materials
3 prepared, exchanged, issued, or used during the course of the negotiations leading up to the
4 Agreement, is intended by the Parties to or will constitute, be introduced, or be submitted in any
5 way in the Action or any other judicial, arbitral, administrative, investigative or other forum or
6 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
7 regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding
8 the foregoing, the Agreement may be used in any proceeding in the Court that has as its purpose the
9 interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the
10 Court entered into in connection therewith. Additionally, insofar as any of the foregoing material is
11 required to be filed by any Court, by Court order, the Parties will comply with such order but will
12 notify the other Party of such an order at least ten (10) days prior to filing of the documents.

13 4.3 The Parties agree that Plaintiff's forthcoming motion for preliminary approval of the
14 Settlement, which will, among other things, seek certification of the Class, is for purposes of the
15 Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification
16 will have no force or effect. The Parties agree that certification for purposes of the Settlement is in
17 no way an admission that class certification is proper under the standard applied to contested
18 certification motions and that this Agreement will not be submitted in this or any other proceeding
19 as evidence that (i) the Class should be certified, or (ii) Defendant is liable to Plaintiff or any of the
20 Class Members or PAGA Members. Further, neither this Agreement nor the Court's actions with
21 regard to this Agreement will be submitted in any court or other tribunal regarding the propriety of
22 class certification or collective treatment for purposes other than the settlement of the Action. In
23 the event that this Agreement is not approved by the Court or any appellate court, is terminated, or
24 otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected
25 in any way, any of its objections or defenses in the Action, including, but not limited to, its defenses
26 in opposition to class certification.

1 5. **CLASS CERTIFICATION**

2 For the purposes of this Agreement only, the Parties agree to the certification of the Class.
3 As set forth above, Defendant expressly reserves its right to oppose class certification should the
4 Court decide to not approve this Settlement.

5 6. **RELEASE AND WAIVER**

6 6.1 Release and Waiver of Claims by Participating Class Members

7 Participating Class Members, and their heirs, successors, assigns, and/or agents, and each of
8 them, upon the Effective Date, and subject to Defendant's payment of the Settlement Amount and
9 by operation of the Final Approval Order, shall fully and finally release and discharge Defendant,
10 the owners and operators of the Monterey Marriott, and each of them, and each of their past,
11 present, and future parent companies, subsidiaries, related companies, and affiliates, and their
12 respective shareholders, members, partners, representatives, fiduciaries, agents (including, without
13 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity
14 sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or
15 future officers, directors and employees), and each of their predecessors, successors, heirs, and
16 assigns, and any individual or entity which could be jointly liable with Defendant, or any of them
17 (collectively, the "Released Parties"), from any and all Released Claims arising out of employment
18 at the Monterey Marriott in a non-exempt position which arose at any time ~~up through and~~
19 ~~including the date of Preliminary Approval. during the Class Period.~~ For purposes of this
20 Agreement, the "Released Claims" are defined as the claims, debts, liabilities, demands, actions, or
21 causes of action pleaded or asserted in the Second Amended Complaint in the Action or that could
22 have been pleaded or asserted based upon the facts alleged in the Second Amended Complaint in
23 the Action, including but not limited to local, state, and/or federal wage and hour claims, failure to
24 pay all wages due, including minimum wages, straight time compensation, overtime compensation,
25 double-time compensation, and interest; the calculation of the regular rate of pay; failure to provide
26 meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at all or at
27 the proper rate of pay; payment for all hours worked, including off-the-clock work; failure to
28 provide accurate itemized wage statements; failure to timely pay all wages during employment;

1 failure to timely pay all wages due at separation of employment; unfair business practices;
2 declaratory relief; penalties, including but not limited to PAGA penalties, wage statement penalties,
3 minimum-wage penalties, and waiting-time penalties; interest; and attorneys' fees and costs. The
4 Released Claims also expressly include all claims arising under the California Labor Code
5 (including but not limited to Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 256,
6 510, 512, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2699 *et*
7 *seq.*); the Wage Orders of the California Industrial Welfare Commission, including but not limited
8 to Wage Order No. 5-2001; PAGA; California Business and Professions Code Section 17200,
9 *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8
10 CCR Sections 11010, 11040, and 11070; California Code of Civil Procedure, including but not
11 limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, *et seq.* The Released Claims also
12 include claims for civil penalties that accrued during the PAGA Period under PAGA to the extent
13 they were alleged or reasonably could have been alleged based on the factual allegations in the
14 PAGA notice filed with the LWDA by Plaintiff or any pleadings filed in the Action by Plaintiff.

15 The Participating Class Members, agree, upon the Effective Date and by operation of the
16 Final Approval Order, to release any further attempt, by lawsuit, administrative claim or action,
17 arbitration, demand, or other action of any kind by each and all of the Participating Class Members
18 (including participation to any extent in any class or collective action), to obtain a recovery against
19 any of the Released Parties for the Released Claims. Class Members who endorse their settlement
20 checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
21 ("FLSA") arising during the Class Period and reasonably related to any or all of the aforementioned
22 claims.

23 The Released Claims exclude the release of claims not permitted by law.

24 6.2 General Release and Waiver of Claims by Plaintiff

25 As of and subject to the occurrence of the Effective Date, and subject to Defendant's
26 payment of the Settlement Amount, and in exchange for the Service Award described in Section
27 10.3, Plaintiff, on behalf of herself and her heirs, successors, assigns, and/or agents, and each of
28 them, fully and finally releases the Released Parties, and each of them, from any and all claims,

1 whether asserted or unasserted, known and unknown, unforeseen, unanticipated, unsuspected or
2 latent, which Plaintiff or any of her heirs, successors, assigns, and/or agents has at any time owned
3 or held prior to the date of execution of this Agreement, under federal, state and/or local law,
4 statute, ordinance, regulation, common law, or other source of law, including but not limited to
5 claims arising from or in any way related to her employment with Defendant and/or her
6 compensation while an employee of Defendant (“Plaintiff’s Released Claims”). Plaintiffs’
7 Released Claims include, but are not limited to, all claims arising from or related to the Action; all
8 claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
9 compensation, overtime compensation, double-time compensation, and interest; the calculation of
10 the regular rate of pay; wages related to alleged illegal rounding; missed meal periods and rest
11 periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay;
12 reimbursement for all business expenses; payment for all hours worked, including off-the-clock
13 work; inaccurate wage statements; unauthorized or improper deductions; failure to keep accurate
14 records; unfair business practices; penalties, including, but not limited to, meal/rest period penalties,
15 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
16 penalties; and attorneys’ fees and costs; all claims arising under the California Labor Code
17 (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
18 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8,
19 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
20 1194.2, 1197, 1197.1, 1197.2, 1198, 2802, 2698 et seq., and 2699 et seq.); all claims arising under
21 the Wage Orders of the California Industrial Welfare Commission; PAGA; California Business and
22 Professions Code section 17200, et seq., the California Civil Code (to include, but not limited to,
23 sections 3287, 3336 and 3294); 12 CCR § 11040; 8 CCR § 11060; California Code of Civil
24 Procedure § 1021.5, the California common law of contract, the FLSA, 29 U.S.C. § 201, et seq.,
25 federal common law, and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.;
26 all claims for lost wages and benefits, emotional distress, punitive damages, other damages, and
27 attorneys’ fees and costs arising under federal, state, or local laws for discrimination, harassment,
28 retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C.

1 section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the
2 Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and
3 the law of contract and tort. This release excludes the release of claims not permitted by law.
4 Plaintiff's Released Claims include all claims, whether known or unknown. Plaintiff stipulates and
5 agrees that, upon the Effective Date, Plaintiff shall be deemed to have, and by operation of the Final
6 Approval Order shall have, expressly waived and relinquished, to the fullest extent permitted by
7 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
8 similar provision under federal or state law, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
10 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
11 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
12 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
13 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
14 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

15 Plaintiff may hereafter discover facts in addition to or different from those Plaintiff now
16 knows or believes to be true with respect to the subject matter of Plaintiff's Released Claims and
17 this General Release, but Plaintiff, upon the Effective Date, shall be deemed to have, and by
18 operation of the Final Approval Order shall have, fully, finally, and forever settled and released any
19 and all of the claims released pursuant to the General Release, whether known or unknown,
20 suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have
21 existed upon any theory of law or equity now existing or coming into existence in the future,
22 including, but not limited to, conduct that is negligent, intentional, with or without malice, or a
23 breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such
24 different or additional facts. Provided however, that Plaintiff does not release her rights to any
25 claims for earned benefits under the terms of any employee benefit plan applicable to her, claims to
26 enforce rights provided by this Agreement, claims that arise after the execution of this Agreement,
27 and claims that cannot be released as a matter of law.

28 6.3 Waiver of Age Claims

1 This Agreement constitutes a knowing and voluntary waiver of any and all rights or claims
2 that Plaintiff has or may have under the Federal Age Discrimination In Employment Act, as
3 amended by the Older Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621 et seq.
4 (“ADEA”). This paragraph and this Agreement are written in a manner calculated to be understood
5 by Plaintiff. Plaintiff has been previously advised in writing to consult with an attorney before
6 signing this Agreement. Plaintiff covenants and agrees that she has previously had a reasonable
7 time of up to 21 days in which to consider signing this Agreement. Plaintiff covenants and agrees
8 that she knowingly and voluntarily decided not to use all 21 days and waived any claim that
9 Plaintiff was not given the 21-day period or did not use the entire 21 days to consider this
10 Agreement. Plaintiff may revoke this Agreement as to the ADEA and only with respect to her
11 release of any age claims she has or may have against any of the Released Parties at any time within
12 the 7-day period following the date Plaintiff signs this Agreement by providing written notice of
13 revocation to ~~Tyler Z. Bernstein~~Greg S. Labate, Sheppard Mullin Richter & Hampton LLP, 650
14 Town Center Drive, 10th Floor, Costa Mesa, California 92626; email:
15 ~~tbernstei~~nglabate@sheppardmullin.com, so that said revocation notice is received before the
16 expiration of the 7-day revocation period. In the event of a revocation by Plaintiff pursuant to this
17 paragraph, and if Defendant chooses not to rescind this Agreement in its entirety, the Agreement
18 shall remain fully effective in all other respects; however, the Service Award to Plaintiff shall be
19 reduced by Four Thousand Dollars and Zero Cents (\$4,000.00), attributable to the ADEA claim.

20 6.4 Release and Waiver of Claims By PAGA Members

21 Upon the Effective Date, subject to Defendant’s payment of the Settlement Amount, and by
22 operation of the Final Approval Order, Plaintiff, the LWDA, and each and all PAGA Members, on
23 behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be
24 deemed to have fully and finally released and discharged the Released Parties, and each of them, of
25 any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt
26 position which arose at any time ~~up through and including the date of the Preliminary Approval~~
27
28

1 ~~Order~~ during the PAGA Period that have been or may be asserted under PAGA seeking civil
2 penalties.

3 7. **NOTICE AND OPPORTUNITY TO OPT OUT OR OBJECT**

4 7.1 Notice to the Class

5 The Parties submit a Notice of Class Action Settlement (“Class Notice”), in the form
6 attached hereto as “Exhibit 1,” to the Court for approval. The Class Notice will include,
7 nonexclusively, information regarding the nature of the Action; a summary of the substance of the
8 Settlement; the definition of the Class and PAGA Members; the formula used to determine the
9 Individual Settlement Payments for the Participating Class Members and Individual PAGA
10 Payments for PAGA Members; the number of Workweeks and PAGA Workweeks credited to each
11 Class Member and PAGA Member, respectively; the estimated Individual Settlement Payment
12 and/or Individual PAGA Payment; the procedures and deadlines for objecting to the Settlement,
13 seeking exclusion from the Settlement (except PAGA Members shall have no right to exclude
14 themselves from the PAGA portion of the Settlement), and/or disputing the number of Workweeks
15 or PAGA Workweeks credited to them; and the date for the Final Approval Hearing.

16 To determine the estimated Individual Settlement Payment for each Class Member for
17 purposes of the Notice, the Settlement Administrator will divide each Class Member’s respective
18 Workweeks by the total workweeks worked by all Class Members during the Class Period, and will
19 multiply the resulting figure by the Net Settlement Amount. To determine the estimated Individual
20 PAGA Payment for each PAGA Member, the Settlement Administrator will divide each PAGA
21 Member’s respective PAGA Workweeks by the total workweeks worked by all PAGA Members
22 during the PAGA Period, and will multiply the resulting figure by the portion of the PAGA
23 Payment (\$6,250.00) allocated to PAGA Members.

24 7.2 Mailing of the Class Notice

25 Within twenty one (21) calendar days following notice by Plaintiff or the Court of the
26 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class
27 List and Data in readable Microsoft Excel spreadsheets. The Class List and Data shall not be
28 shared with Class Counsel.

1 Within fifteen (15) calendar days after the Settlement Administrator's receipt of the Class
2 List and Data, the Settlement Administrator shall mail the Class Notice to the Class Members via
3 first-class regular U.S. mail. Class Members will have forty-five (45) calendar days from the
4 mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion (as defined
5 below), dispute, or objection. The date of initial mailing of the Class Notice by the Settlement
6 Administrator to the Class Members is the "Initial Mailing." Prior to mailing the Class Notice to
7 Class Members, the Settlement Administrator will perform one search based on the National
8 Change of Address Database information to update and correct the Class List and Data for any
9 known or identifiable address changes.

10 If, within thirty (30) calendar days of the Initial Mailing, a Class Notice is returned with a
11 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
12 the Settlement Administrator shall forward the original Class Notice to the updated address via
13 first-class regular U.S. mail indicating on the Class Notice the date of such re-mailing. If a Class
14 Notice is returned within thirty (30) calendar days of the Initial Mailing as undeliverable without a
15 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
16 the Settlement Administrator will promptly attempt to determine the correct address using a skip-
17 trace search, and will perform a single re-mailing to any addresses located indicating the date of the
18 re-mailing on the Class Notice. Those Class Members who receive a re-mailed Class Notice (as a
19 result of the Settlement Administrator locating an updated address by way of skip-trace search,
20 forwarding address provided by the post office, or request from the Parties or Class Members), will
21 have the later of (a) fifteen (15) calendar days from the date the Class Notice is re-mailed or (b) the
22 Response Deadline to postmark a Request for Exclusion, objection, or dispute regarding
23 Workweeks or PAGA Workweeks to the Settlement Administrator ("Extended Response
24 Deadline").

25 In the event that the procedures in this Section are followed and the intended recipient of a
26 Class Notice still does not receive the Class Notice, the intended recipient shall be bound by all
27 terms of the Settlement and any Final Approval Order and Final Judgment entered by the Court if
28 the Settlement is approved by the Court. In the event the procedures in this Section are followed

1 and a Class Member does not ultimately return a Request for Exclusion and/or the Request for
2 Exclusion is rejected by the Settlement Administrator, the Class Member shall be deemed a
3 Participating Class Member and will be bound by all terms of the Settlement and any Final
4 Approval Order and Final Judgment entered by the Court if the Settlement is approved by the
5 Court.

6 7.3 Objection to the Settlement

7 A Participating Class Member may object to the Settlement. To assert an objection to the
8 Settlement, a Participating Class Member must submit an objection to the Settlement Administrator
9 by first class U.S. mail at the address specified on the Class Notice, not later than the Response
10 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The date
11 of the postmark will be the exclusive means for determining whether an objection has been timely
12 submitted. All objections must be in writing, which includes: (1) the objector's full name, address,
13 last four digits of his or her Social Security number, and signature; (2) the case name and number;
14 (3) the factual and legal basis, with supporting documents, if any, on which the objection is based;
15 (4) whether the objector is represented by an attorney and providing the contact information of any
16 such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. The
17 Parties agree that the Settlement Administrator shall not disclose the last four digits of any
18 objecting Class Member's Social Security number to anyone but the Parties, that such information
19 will be securely held, and that the disclosure of those last four digits to the Parties shall not be used
20 for any purpose except to ascertain the identity of the objector for administration of this Settlement.
21 Any person who fails to timely submit their written objections in the manner specified above may
22 still appear and object at the Final Approval Hearing. If a Participating Class Member objects to
23 this Settlement, the Participating Class Member will remain a member of the Class for Settlement
24 purposes, and if the Court grants final approval of the Settlement, he or she will be bound by the
25 terms of the Settlement and any Final Approval Order and Final Judgment. Within three (3)
26 business days of receipt of an objection, the Settlement Administrator shall provide counsel for the
27 Parties with a copy of the objection. No later than fourteen (14) calendar days before the Final
28 Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a

1 complete list of Participating Class Members who have submitted an objection. Prior to the Final
2 Approval Hearing, the Settlement Administrator shall submit copies of the objections that it has
3 received, to the Court by way of declaration.

4 7.4 Request for Exclusion from the Settlement

5 Class Members who wish to exclude themselves from the Settlement must submit a valid
6 and timely request for exclusion (“Request for Exclusion”) to the Settlement Administrator by mail,
7 postmarked on or before the Response Deadline or, in the instance of a re-mailed Class Notice, the
8 Extended Response Deadline. The date of the postmark on the return mailing envelope will be the
9 exclusive means for determining whether a Request for Exclusion has been timely submitted. A
10 Request for Exclusion must be in writing which contains: (1) the Class Member’s full name, current
11 address, last four digits of his/her Social Security number; (2) the case name and number; (3) a clear
12 statement that the Class Member wishes to be excluded from the Settlement; and (4) the Class
13 Member’s signature and the date of signature. With respect to Class Members who submit a
14 Request for Exclusion, the Parties agree that the Settlement Administrator shall not disclose the last
15 four digits of any such Class Member’s Social Security number to anyone but the Parties, that such
16 information will be securely held, and that the disclosure of those last four digits to the Parties shall
17 not be used for any purpose except to ascertain the identity of the individual who wishes to exclude
18 himself or herself from the Settlement for administration of this Settlement. The name and last four
19 digits of the Social Security number provided by the Class Member on the Request for Exclusion
20 must match Defendant’s records as provided to the Settlement Administrator, or match Defendant’s
21 records for that particular Class Member. The name and Social Security number provided by the
22 Class Member will be deemed to match Defendant’s records only if: (1) both the first name and the
23 last name and the last four digits of the Social Security number provided by the Class Member
24 match Defendant’s records; (2) the first name and the last four digits of the Social Security number
25 provided by the Class Member match Defendant’s records and it appears the last name has been
26 changed as a result of a change in marital status or is a shortened or lengthened version of the name
27 that appears in Defendant’s records; or (3) the last four digits of the Social Security number and last
28 name match Defendant’s records and the first name provided is either a nickname or a shortened or

1 lengthened version of the name that appears in Defendant's records. Each Class Member who does
2 not submit a Request for Exclusion in compliance with this paragraph will be deemed to be a
3 Participating Class Member. Participating Class Members will be bound by all terms of the
4 Agreement and the Final Approval Order and Final Judgment. Any Class Member who submits a
5 timely, valid Request for Exclusion will not be a Participating Class Member, will not be entitled to
6 receive any Individual Settlement Payment, and will not be bound by this Agreement or have any
7 right to object, appeal, or comment thereon; provided, however, that the Parties agree there is no
8 statutory or other right for any Class Member or PAGA Members to opt out or otherwise exclude
9 himself or herself from the PAGA portion of the Settlement. A Class Member who submits a valid
10 and timely Request for Exclusion and who is also a PAGA Member shall still receive his or her
11 Individual PAGA Payment and shall be bound by the release of the PAGA claims during the PAGA
12 Period.

13 No later than thirty (30) calendar days before the Final Approval Hearing, the Settlement
14 Administrator shall provide counsel for the Parties with a complete list of all Class Members who
15 have submitted a valid and timely Request for Exclusion.

16 If a Class Member submits both a Request for Exclusion and written objection to the
17 Settlement Administrator prior to the Response Deadline, the Settlement Administrator will first
18 attempt to contact the Class Member(s) to determine if they intended to submit only the Request for
19 Exclusion or written objection. If the Settlement Administrator is unable to contact the Class
20 Member(s) within ten (10) calendar days of receiving both the Request for Exclusion and written
21 objection or if the Class Member(s) fails to respond to the Settlement Administrator within ten (10)
22 calendar days of being contacted, then only the Request for Exclusion will be deemed valid. The
23 Class Member(s)' written objection will be invalid, and the Class Member will no longer be
24 considered a Participating Class Member, will not receive his or her Individual Settlement Payment,
25 and will not be bound by the release of Released Claims (but will still have fully and finally
26 released and discharged the Released Parties of all Released Claims arising during the PAGA
27 Period that may be asserted under PAGA).

28

1 7.5 No Solicitation of Objections to or Exclusions from the Settlement

2 The Parties agree to use their best efforts to carry out the terms of this Agreement. At no
3 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
4 to submit Requests for Exclusion, objections to the Settlement, or appeal from or seek review of the
5 Court's Preliminary Approval Order, Final Approval Order, or Final Judgment, provided, however,
6 that Class Counsel may respond to any questions received from Class Members regarding the
7 Settlement and this Agreement.

8 8. **DEFENDANT'S RIGHT TO RESCIND**

9 If either (i) 10% or more of the Class Members, or, (ii) a number of Class Members whose
10 Individual Settlement Payments in the aggregate are 10% or more of the Settlement Amount, either
11 opt out of and/or object to the Settlement, or if both (i) and (ii) occur, Defendant may, at its
12 election, rescind the Settlement and all actions taken in its furtherance of it will be thereby null and
13 void. If Defendant exercises this right of recession, it must do so in writing, sent to Class Counsel
14 by email to attorneys@gaineslawfirm.com and overnight mail, addressed to: Daniel Gaines of
15 Gaines & Gaines, APLC, 4550 East Thousand Oaks Blvd., Ste. 100, Westlake Village, CA 91362.
16 If the option to rescind is exercised, Defendant must exercise it no later than five (5) court days
17 prior to the Final Approval Hearing, and Defendant shall be solely responsible for all Settlement
18 Administration Costs accrued to that point. If such provision is exercised, the Action will return to
19 its pre-settlement litigation posture.

20 9. **DISPUTES REGARDING WORKWEEKS**

21 The Class Notice mailed to each Class Member will indicate the Workweeks and PAGA
22 Workweeks credited to each Class Member and the estimated Individual Settlement Payment and/or
23 Individual PAGA Payment that he/she is to receive based upon Defendant's records and the
24 formula set forth in Section 10 below. If a Class Member disputes the Workweeks and/or PAGA
25 Workweeks credited to him or her, as stated in the Class Notice, the Class Member must submit
26 written correspondence to the Settlement Administrator that is postmarked no later than the
27 Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response
28 Deadline, explaining the basis for the dispute and including any supporting documentation showing

1 that the Workweeks and/or PAGA Workweeks credited to him or her is inaccurate. Defendant's
2 records will be presumed determinative, absent credible evidence to rebut the accuracy of the
3 Workweeks and/or PAGA Workweeks credited to a Class Member based thereon. The Settlement
4 Administrator will evaluate the evidence submitted by the Class Member and make a
5 recommendation to the Parties as to which figures should be applied. If the Parties disagree with
6 the Settlement Administrator's recommendation, the dispute will be presented to the Court for
7 determination.

8 10. **COMPUTATION AND DISTRIBUTION OF PAYMENTS**

9 10.1 Settlement Amount

10 The Settlement Amount has been agreed to by the Parties, based on analysis and assessment
11 of the value of the claims of the Class, and, other than the employer portion of payroll taxes, the
12 Settlement Amount is the maximum amount that Defendant agreed to pay with respect to the
13 Settlement. It is expressly understood that if the Court awards less than the total amounts requested
14 to be awarded for Attorneys' Fees, Litigation Costs and Expenses, PAGA Payment, Settlement
15 Administration Costs, and/or Service Award to Plaintiff, or as otherwise provided herein, the
16 difference in any such amounts will be added to the Net Settlement Amount.

17 10.2 Distribution to the Participating Class Members

18 Individual Settlement Payments to be made to Participating Class Members will be
19 determined as follows: The Settlement Administrator will calculate the total number of Workweeks
20 worked by all Participating Class Members during the Class Period ("Total Workweeks"). To
21 determine the Individual Settlement Payment for each Participating Class Member, the Settlement
22 Administrator will (1) divide each Participating Class Member's respective Workweeks by the
23 Total Workweeks, and (2) multiply the resulting figure by the Net Settlement Amount. The
24 Individual Settlement Payment will be reduced by any required legal deductions for each
25 Participating Class Member, provided that such legal deductions will not include the employer's
26 share of any payroll taxes, as set forth in Section 1.27 above.

27 Participating Class Members will have one hundred eighty (180) calendar days from the
28 date on which the Individual Settlement Payment and/or Individual PAGA Payment check is issued,

1 to cash or deposit such check(s). If an Individual Settlement Payment and/or Individual PAGA
2 Payment check is not cashed or deposited within ninety (90) calendar days after mailing, the
3 Settlement Administrator will send a reminder postcard indicating that unless the check is cashed or
4 deposited within the original 180 day check cashing period, the check(s) will expire and become
5 non-negotiable, and offering to replace the check(s) if it was lost or misplaced. If any checks remain
6 uncashed or not deposited by the expiration of the 180 day check cashing period, the Settlement
7 Administrator will, within two hundred (200) calendar days after the checks are initially mailed,
8 cancel the check(s), and pay the amount of the Individual Settlement Payment(s) and/or Individual
9 PAGA Payment(s) to the ~~California State Controller's Office in accordance with California~~
10 ~~Unclaimed Property Law in the name of the Participating Class Member(s) and Parties' chosen cy~~
11 ~~pres, UNICEF USA (or PAGA Members, as an alternative distribution for which there is good~~
12 ~~cause, otherwise ordered by the Court),~~ under Code of Civil Procedure § 384(b).

13 10.3 Service Award to Plaintiff

14 Plaintiff will apply to the Court for a service award of no more than ~~\$10,000~~\$4,500.00 (the
15 "Service Award"), to be paid out of the Settlement Amount. Defendant will not oppose such an
16 application, so long as it is consistent with the provisions of this Agreement. Plaintiff shall be
17 solely and legally responsible to pay any and all applicable taxes on the Service Award and shall
18 hold harmless the Released Parties from any claim or liability for taxes, penalties or interest arising
19 as a result of the payment. Plaintiff is solely responsible for providing a completed IRS W-9 form
20 to the Settlement Administrator prior to distribution. The Settlement Administrator will issue to
21 Plaintiff an IRS Form 1099 reflecting the Service Award.

22 10.4 PAGA Payment

23 The Parties agree to allocate the amount of \$25,000.00 from the Settlement Amount
24 pursuant to PAGA as the PAGA Payment. Seventy-five percent (75%) of this amount, or
25 \$18,750.00, will be paid to the LWDA and twenty-five percent (25%) of this amount, or \$6,250.00,
26 will be distributed to PAGA Members. The portion of the PAGA Payment (\$6,250.00) distributed
27 to PAGA Members shall be calculated and distributed on a pro rata basis based on PAGA
28 Members' respective number of PAGA Workweeks during the PAGA Period. The Settlement

1 Administrator will (1) divide each PAGA Member's PAGA Workweeks by the total number of
2 workweeks worked by all PAGA Members during the PAGA Period, and (2) multiple the resulting
3 figure by the portion of the PAGA Payment (\$6,250.00) allocated to PAGA Members in order to
4 yield each PAGA Member's Individual PAGA Payment.

5 In the event that the Court finds the Parties' allocation of proceeds from the Settlement
6 Amount to PAGA to be insufficient, the Parties expressly reserve the right to amend this Agreement
7 to increase the allocated amount to a level that satisfies the Court's discretion, but provided that
8 such increase does not increase the Settlement Amount.

9 10.5 Attorneys' Fees and Litigation Costs and Expenses

10 Class Counsel shall be entitled to apply to the Court for attorneys' fees payable to Class
11 Counsel in the amount of up to ~~3533-1/3~~% of the Settlement Amount, which is estimated to be
12 ~~\$101,500.00~~96,666.67 ("Attorneys' Fees"), and litigation costs and expenses in an amount not to
13 exceed \$20,000.00 ("Litigation Costs and Expenses"). The amounts set forth above for Attorneys'
14 Fees and Litigation Costs and Expenses will cover all work performed and all fees and costs
15 incurred by Class Counsel to date, and all work to be performed and all fees to be incurred in
16 connection with the litigation of the Action, seeking preliminary and final approval by the Court of
17 this Settlement and Agreement, the administration of the Settlement, seeking and obtaining a
18 Preliminary Approval Order and Final Approval Order, and obtaining Final Judgment. Class
19 Counsel is solely responsible for providing completed IRS W-9 forms to the Settlement
20 Administrator prior to distribution. The Settlement Administrator shall issue an IRS Form 1099 to
21 Class Counsel reflecting the awarded Attorneys' Fees and Litigation Costs and Expenses. Should
22 Plaintiff and/or Class Counsel request a lesser amount for Attorneys' Fees and/or the Court
23 approves a lesser amount, the difference between the lesser amount and the requested ~~3533-1/3~~%
24 (estimated to be ~~\$101,500.00~~96,666.67) will be a part of the Net Settlement Amount. Should
25 Plaintiff and/or Class Counsel request a lesser amount for its Litigation Costs and Expenses and/or
26 the Court approves a lesser amount, the difference between the lesser amount and \$20,000.00 will
27 be added to the Net Settlement Amount. Class Counsel will not be permitted to petition the Court
28 for, or accept, any additional payments from Defendant for attorneys' fees, costs, or expenses in

1 connection with the Action. Class Counsel shall assume full responsibility and liability for the
2 payment of taxes due on such awards.

3 Defendant's payment of the Attorneys' Fees and Litigation Costs and Expenses awarded to
4 Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person,
5 attorney, or law firm for attorneys' fees, costs, or expenses in the Action incurred by any attorney
6 on behalf of the Plaintiff, the Class Members, and the PAGA Members, and shall relieve
7 Defendant, the Settlement Administrator, and Defendant's counsel of any other claims or liability to
8 any other attorney or law firm for any attorneys' fees, costs, and expenses to which any of them
9 may claim to be entitled on behalf of Plaintiffs and/or the Class Members and PAGA Members.

10 10.6 Settlement Administrator

11 Subject to approval by the Court, the Parties agree that the fees and expenses of the
12 Settlement Administrator in relation to services rendered in administration of the Settlement of the
13 Action shall be deducted from the Settlement Amount, not to exceed \$10,000.00 ("Settlement
14 Administration Costs"), absent approval of the Court for a greater amount. If the Settlement
15 Administrator's actual costs are lower than, or the Court awards less than the total amount allocated
16 for Settlement Administration Costs, the difference in any such amounts will be a part of the Net
17 Settlement Amount.

18 The Settlement Administrator shall have the authority to mail the Class Notice; establish a
19 qualified settlement fund account and administer the Settlement Amount; and disburse funds from
20 the Settlement Amount in accordance with this Agreement. The Settlement Administrator shall
21 calculate the Individual Settlement Payments to be paid to the Participating Class Members in
22 accordance with the terms and provisions of this Agreement; calculate the Individual PAGA
23 Payments to be paid to PAGA Members in accordance with the terms and provisions of this
24 Agreement; distribute the Class Notice; determine eligibility for payment to a Class Member or
25 PAGA Member; resolve any disputes regarding the Workweeks and/or PAGA Workweeks credited
26 to each Class Member and/or PAGA Member; keep track of those Class Members requesting to be
27 excluded from the Settlement, and provide information regarding objections and Requests for
28 Exclusion to the Parties' counsel; mail the Individual Settlement Payment checks to Participating

1 Class Members and Individual PAGA Payment checks to PAGA Members; undertake require tax
2 withholdings and reporting; and perform such other tasks necessary to effectuate the terms of this
3 Agreement or as the Parties mutually agree or the Court orders the Parties to perform. The
4 Settlement Administrator shall regularly report to the Parties, in written form, the substance of the
5 work performed.

6 The Settlement Administrator will submit to the Court, in conjunction with the motion for
7 final approval, a declaration providing, among other things, the number of Class Notices it mailed
8 to the Class Members, the number of Class Notices that it re-mailed, the number of Class Notices
9 that were ultimately undeliverable, the number of Requests for Exclusion and objections that it
10 received, the number of defective Requests for Exclusion and objections that it received, the total of
11 its charges for services rendered, and the anticipated future charges contemplated in order to bring
12 the administration of the Settlement and distribution of payments to completion.

13 Any disputes relating to the Settlement Administrator's ability and need to perform its
14 duties shall be referred to the Court.

15 10.7 Time for Funding of the Settlement

16 Prior to the Effective Date of the Settlement, Defendant will not be required to fund the
17 Settlement, in whole or in part, through the Settlement Administrator or any third party. Within
18 twenty one (21) calendar days after the Effective Date, Defendant shall provide the Settlement
19 Administrator with sufficient funds to make all the payments required under this Settlement.

20 10.8 Time for Distribution

21 Within 30 calendar days after receipt of the Settlement Amount from Defendant, the
22 Settlement Administrator shall make the following payments as approved by the Court:
23 (1) Individual Settlement Payments to Participating Class Members; (2) Individual PAGA
24 Payments to PAGA Members; (3) the Service Award; (4) the Attorneys' Fees; (5) the Litigation
25 Costs and Expenses; (6) payment to the LWDA of the LWDA portion of the PAGA Payment; and
26 (7) the Settlement Administration Costs.

1 ~~10.9 Escalator Clause~~

2 10.9 End of Class Period and PAGA Period

3 In connection with Mediation, that took place on July 26, 2023, Defendant estimated that
4 as of May 11, 2023, there were approximately 33,000 weeks worked by Class Members.

5 ~~Mediation took place on July 26, 2023.~~ The Parties agree that if, as of the Class Period and
6 PAGA Period will end on the date of the pay period covering July 26, 2023, when the number of
7 ~~weeks worked by Class Members was 37,950 weeks or more (i.e., if the number of~~
8 ~~weeksworkweeks~~ worked by Class Members ~~as of the end date of the pay period covering July 26,~~
9 ~~2023 reaches 37,950 workweeks (counting from July 21, 2018). 37,950 workweeks~~ is fifteen
10 percent (15%) ~~or more greater than 33,000 weeks worked~~, Defendant shall have the option to
11 ~~(i) pay a pro rata increase on the Settlement Amount to compensate for the overage; or (ii) end the~~
12 ~~Class Period and PAGA Period on the date that is one day before the date the total number of~~
13 ~~weeks worked by Class Members exceeds 37,950 weeks worked. more than the 33,000 workweeks~~
14 estimated to have been worked by Class Members when the Parties attended Mediation.

15 10.10 Allocation

16 All Individual Settlement Payments will be allocated as follows: 50% as wages (“wage
17 portion”) and 50% as penalties, any other non-taxable items, and interest. The wage portion of each
18 Individual Settlement Payment will be subject to W-2 reporting and, therefore, normal employee’s
19 share of payroll taxes and withholdings will be deducted pursuant to applicable state and federal
20 law. Defendant shall be responsible for paying employer-side taxes separately from the Settlement
21 Amount. Participating Class Members will be issued an IRS Form 1099 for the portion of their
22 Individual Settlement Payments that is treated as interest and penalties and any other non-taxable
23 items and will assume full responsibility and liability for the payment of taxes due on such awards,
24 if any. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA
25 Members will be issued an IRS Form 1099 for their Individual PAGA Payment and will assume full
26 responsibility and liability for the payment of taxes due on such awards, if any. The Parties make
27 no representations about the tax consequences to the portion of the Individual Settlement Payments
28 representing interest and penalties.

1 11. **INTEREST**

2 The Settlement Amount includes any and all interest accruals and no additional interest shall
3 be due under any circumstances.

4 12. **TAXATION**

5 12.1 It is the sole obligation of Plaintiff, each of the Participating Class Members, and
6 each of the PAGA Members to pay appropriate federal, state, and local income taxes on any
7 amounts they receive under this Agreement that lawfully qualify as taxable income.

8 12.2 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR
9 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
10 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
11 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
12 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
13 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
14 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
15 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
16 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
17 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
18 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
19 ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
20 AGREEMENT, (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 ANY
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
3 AGREEMENT.

4 13. **COURT APPROVAL**

5 13.1 Following the Preliminary Approval Order, if Defendant does not exercise its right
6 to cancel the Settlement solely as provided for herein, a motion for final approval of the
7 Settlement will be filed by Class Counsel, which, if not separately filed by Class Counsel, will
8 include a request for Attorneys' Fees, Litigation Costs and Expenses, and Service Award as
9 provided for herein, which Defendant will not oppose. The Parties agree to take all steps as may
10 be reasonably necessary to secure final approval of the Settlement as quickly as possible, to the
11 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
12 each other in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in
13 all respects.

14 13.2 If the Court does not grant preliminary approval and/or final approval of the
15 Settlement, or if the Court's Final Approval Order and Final Judgement are reversed or materially
16 modified on appeal, then this Settlement will become null and void.

17 13.3 In the event the Court declines to enter the Final Approval Order and Final
18 Judgment, this Agreement shall be null and void and any order or judgment entered by the Court
19 in furtherance of this Agreement shall be treated as void. In such a case, the Parties and any funds
20 to be awarded under this Settlement shall be returned to their respective statuses as of the date and
21 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
22 respects as if this Agreement had not been executed, except that any fees and expenses already
23 reasonably incurred by the Settlement Administrator shall be paid by Defendant.

24 14. **MISCELLANEOUS PROVISIONS**

25 14.1 **No Effect on Regular Rate or Overtime Compensation**

26 Participating Class Members and PAGA Members will receive payment under the
27 Settlement, as determined by the Settlement Administrator in accordance with this Agreement. The
28 Parties agree that this payment is not viewed as additional compensation for purposes of calculating

1 a “regular rate” of pay under California or federal law for the period during which it is received, and
2 no additional overtime compensation is required as a result of such payment; further, any claim to
3 entitlement to any additional overtime compensation is expressly waived under the terms of this
4 Agreement. No person or entity shall have any claim against Defendant, Defendant’s Counsel,
5 Plaintiff, any Class Members or PAGA Members, Class Counsel, or the Settlement Administrator
6 based upon distributions and payments made in accordance with this Agreement.

7 14.2 No Effect on Employee Benefits

8 The Individual Settlement Payments and/or Individual PAGA Payments to be paid to
9 Plaintiff, Participating Class Members, and PAGA Members, and the Service Award to be paid to
10 Plaintiff, shall be deemed not to be pensionable earnings and shall not have any effect on the
11 eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay,
12 retirement plans, etc.) of Plaintiff, any Participating Class Members, or any PAGA Members. Such
13 payments do not represent any modification of Plaintiff’s, Participating Class Members’, or PAGA
14 Members’ previously credited hours of service or other eligibility criteria under any employee
15 pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any
16 Individual Settlement Payment, Individual PAGA Payment, or Service Award shall not be
17 considered “compensation” in any year for purposes of determining eligibility for, or benefit
18 accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by
19 Defendant.

20 14.3 Headings

21 The descriptive headings of any paragraphs or sections of this Agreement are inserted for
22 convenience of reference only and do not constitute a part of this Agreement.

23 14.4 Final Agreement

24 This Agreement constitutes the exclusive and final understanding and expression of all
25 agreements between the Parties with respect to the resolution of the Action, and supersedes all prior
26 agreements and understandings between the Parties relating to the subject matter hereof. Plaintiff,
27 on behalf of herself and on behalf of the Class Members, PAGA Members, and LWDA, and
28

1 Defendant enter into this Agreement based solely upon its terms and not in reliance upon any
2 representations or promises other than those contained in this Agreement.

3 14.5 Amendment or Modification

4 This Agreement may be amended or modified only by a written instrument signed by
5 counsel for the Parties, or their successors, and approved by the Court.

6 14.6 Counterparts/Facsimile

7 This Agreement may be executed in one or more actual or telecopied counterparts, all of
8 which will be considered one and the same instrument and all of which will be considered duplicate
9 originals. A signature by facsimile or DocuSign on this Agreement shall be as legally binding as an
10 original signature.

11 14.7 Authority

12 Counsel for all Parties represent and warrant they are expressly authorized by the Parties
13 whom they represent to negotiate this Agreement and to take all appropriate actions required or
14 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
15 execute any other documents required to effectuate the terms of this Agreement. The Parties and
16 their counsel will cooperate with each other and use their best efforts to effectuate the
17 implementation of the Settlement. In the event that the Parties are unable to reach agreement on
18 the form or content of any document needed to implement the Settlement, or on any supplemental
19 provisions that may become necessary to effectuate the terms of the Settlement, the Parties shall
20 seek the assistance of the Court to resolve such disagreement. The person signing this Agreement
21 on behalf of Defendant represents and warrants that she is authorized to sign this Agreement on its
22 behalf.

23 14.8 Binding on Successors and Assigns

24 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
25 of the Parties hereto, as previously defined.

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1 14.9 Interim Stay of Proceedings.

2 The Parties agree to stay and hold all proceedings in the Action in abeyance, except such
3 proceedings necessary to implement and complete the Settlement, pending the Final Approval
4 Hearing to be conducted by the Court.

5 14.10 Fair, Adequate, and Reasonable Settlement.

6 The Parties and their respective counsel believe and warrant that this Agreement reflects a
7 fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through
8 arm's-length negotiations, considering all relevant factors, current and potential.

9 14.11 Cooperation and Drafting

10 Each of the Parties has cooperated in the drafting and preparation of this Agreement.
11 Hence, in any construction made to this Agreement, the same shall not be construed against any of
12 the Parties.

13 14.12 Invalidity of Any Provision

14 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
15 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
16 as to define all provisions of this Agreement as valid and enforceable.

17 14.13 Plaintiff's Waiver of Right to Be Excluded

18 By signing this Agreement, Plaintiff is bound by the terms herein stated and further agrees
19 not to submit a Request for Exclusion from the Settlement. Any such Request for Exclusion shall
20 therefore be void and of no force or effect. Plaintiff also agrees to not disparage the Settlement to
21 Class Members or PAGA Members or encourage, in any way, Class Members to submit or not to
22 submit a Request for Exclusion. In addition, neither Plaintiff nor Class Counsel will initiate any
23 contact with Class Members or PAGA Members about the amount or terms of the Settlement.

24 14.14 Publicity

25 Plaintiff and Class Counsel, and each of them, agree that they (i) will keep the fact, amount
26 or terms of the Settlement strictly confidential (except as required by law or Court order and only
27 until such time as the Settlement becomes a matter of public record); (ii) will not issue any press
28 releases, initiate any contact with the press, respond to any press inquiry or have any

1 communication with the press about the fact, amount or terms of the Settlement; and (iii) will not
2 engage in any advertising or distribute any marketing materials that disclose or mention the fact,
3 amount or terms of the Settlement of this case, including but not limited to any postings on any
4 websites maintained by Class Counsel; provided, however, that following the filing of preliminary
5 approval papers, (i) Plaintiff and Class Counsel may respond to (but not initiate) press inquiries by
6 stating only that the matter has been resolved and referring the press to court filings; and (ii) Class
7 Counsel may post the preliminary approval papers on their website solely to provide information
8 about the Settlement to the Class and can communicate with the Class about the Settlement. This
9 paragraph does not preclude referring any third party to Court filings. At all times, though, the
10 Plaintiff and Class Counsel remain bound by Section 7.5 above.

11 14.15 Defense

12 To the extent permitted by law, this Settlement may be plead as a full and complete defense
13 to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that
14 may be instituted, prosecuted, or attempted with respect to the Released Claims against the
15 Released Parties in breach of or contrary to the Settlement.

16 14.16 Final Judgment

17 The Parties agree that, upon final approval of the Settlement, a Final Judgment will be made
18 and entered, resolving the Action in its entirety.

19
20 WHEREFORE, Plaintiff, on behalf of herself, the Participating Class Members, PAGA Members,
21 and LWDA, and Defendant, have executed this Agreement as of the dates set forth below.

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Executed on: _____

PLAINTIFF GABRIELA BUSTAMANTE

Executed on: _____

DEFENDANT MARRIOTT HOTEL SERVICES,
INC. (*now known as* MARRIOTT HOTEL
SERVICES, LLC)

GAINES & GAINES, APLC

Executed on: _____

DANIEL GAINES
~~EVAN GAINES~~
ALEX KATOFSKY
For Plaintiff Gabriela Bustamante and the Class

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Executed on: _____

GREG S. LABATE
~~TYLER Z. BERNSTEIN~~ ERIC T. ANGEL
For Defendants Marriott Hotel Services, Inc. (*now
known as* Marriott Hotel Services, LLC)

EXHIBIT 1

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
CLASS ACTION SETTLEMENT HEARING**

IMPORTANT LEGAL NOTICE

This is not an advertisement

Bustamante v. Marriott Hotel Services, Inc.

Superior Court for the County of Santa Clara, Case No. 22CV400968

**THIS NOTICE IS BEING SENT AS PART OF A SETTLEMENT FROM A COURT AND CONTAINS
IMPORTANT INFORMATION THAT MAY AFFECT YOU**

YOU ARE NOT BEING SUED

TO: ALL PERSONS EMPLOYED BY MARRIOTT HOTEL SERVICES, INC. (*now known as* MARRIOTT HOTEL SERVICES, LLC) AS A NON-EXEMPT EMPLOYEE AT THE MONTEREY MARRIOTT IN CALIFORNIA FOR ANY PORTION OF TIME BETWEEN JULY 21, 2018 AND **PA** **DATE** **NOVEMBER 24, 2023** (THE “CLASS MEMBERS”)

1. Why Did I Receive This Notice?

A proposed settlement has been reached in a lawsuit that may affect your rights.

This lawsuit is against Marriott Hotel Services, Inc. (*now known as* Marriott Hotel Services, LLC) (referred to in this notice as “Defendant”). Gabriela Bustamante is a former employee of Defendant at the Monterey Marriott in California. She filed this lawsuit. This notice refers to Ms. Bustamante as “Plaintiff.”

You are receiving this notice because Defendant’s records indicate that you worked for Defendant at the Monterey Marriott in California as a non-exempt employee for some time between July 21, 2018 and **PA **DATE** **NOVEMBER 24, 2023** (“Class Period”).** This means you are a potential Class Member, and you have a right to know about the proposed settlement. This notice explains the lawsuit, the proposed settlement, your legal rights, what payments may be available, and how to get them.

2. What Is the Lawsuit About?

Plaintiff filed a proposed class action lawsuit on behalf of herself and other Class Members. Plaintiff claims that Defendant violated California law by:

- (1) failing to pay all wages due;
- (2) failing to provide legally required rest periods;
- (3) failing to provide legally required meal periods;
- (4) failing to provide accurate wage statements;
- (5) failing to pay wages due at separation of employment;
- (6) violating Business and Professions Code § 17200 *et seq.*; and
- (7) violating the Private Attorneys General Act of 2004 (“PAGA”)

Plaintiff sought unpaid wages, interest, and penalties, as well as attorneys’ fees and costs for Class Members. Defendant denies each and every one of Plaintiff’s allegations, and believes that it has treated, and continues to treat, Class Members in accordance with all applicable laws at all times. The Court has not made any decision on whether the claims in this lawsuit have merit or not.

3. What Is a Class Action?

A class action lawsuit is a legal proceeding where one or more persons sue not just for themselves, but for other people who have similar claims (forming a “class” or group of people).

4. Background of Settlement

The claims in this case are contested. Defendant denies that it committed any wrongdoing. Plaintiff’s lawyers have received sufficient information from Defendant in order to evaluate the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses and reached a settlement with Defendant after extensive arm’s-length negotiations. The Court did not decide in favor of Plaintiff or Defendant.

Plaintiff and her lawyers believe the settlement is in the best interests of the Class Members considering the uncertain outcome, and the risks, costs, and time involved in further litigation, trial, and possible appeals.

5. What Are the Terms of the Proposed Settlement?

Defendant has agreed to pay a total of Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) (the “Settlement Amount”) to settle this case. This money will be divided among all Class Members. It will also be used to pay approximately \$96,666.67 in Plaintiff’s lawyers’ fees and no more than \$20,000 for Plaintiff’s lawyers’ ~~fees and~~ costs of litigation, a payment in the amount of \$18,750.00 to the State of California Labor Workforce Development Agency for its share of penalties under PAGA, payment to the Plaintiff in the amount of \$4,500 for her service to the Class, and ~~payments~~payment not to exceed \$10,000 to the Settlement Administrator for calculating and distributing payments.

6. How Much Will My Settlement Payment Be?

Individual Settlement Payments to Class Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California during the Class Period to the total number of weeks worked by all Class Members during the Class Period.

In addition, Individual PAGA Payments to PAGA Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California between July 21, 2021 and ~~[PA DATE]~~November 24, 2023 (the “PAGA Period”) to the total number of weeks worked by all PAGA Members during the PAGA Period.

More detail on the formula for determining each Class Member’s share and each PAGA Member’s share has been provided to the Court and can be obtained from Class Counsel.

Based on Defendant’s records, you worked ____ workweeks **during the Class Period** and ____ workweeks **during the PAGA Period**.

Based on this data, your *estimated* settlement payment is shown in the chart below. This is just an estimate. Your final share will be determined by the Settlement Administrator.

Member	Time credited as a Class Member and PAGA Member	Your Estimated Share
Class Member	<u> </u> WORKWEEKS (During Class Period)	<u>\$INSERT</u> (Individual Settlement Payment)
PAGA Member	<u> </u> PAY PERIODS (During PAGA Period)	<u>\$INSERT</u> (Individual PAGA Payment)

For tax reporting purposes, 50% of the Individual Settlement Payment to Class Members will be assigned to wages, which are subject to legally required state and federal withholdings and deductions, reported on a form

W-2, and 50% to penalties, reported on an IRS Form 1099, with no withholding taken. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA Members will be issued an IRS Form 1099 for their Individual PAGA Payment.

7. When Will I Receive My Payment and What Do I Have To Do?

Class Members who do not opt out will be sent their Individual Settlement Payments and Individual PAGA Payments within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

Class Members who opt out of the settlement but who qualify as a PAGA Member, or for those who never were Class Members but are a PAGA Member, your Individual PAGA Payment will be sent within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

You must cash your check within 180 days of when the check is issued. The check will be void after 180 days, and the settlement provides that money will be ~~deposited with the~~ distributed to UNICEF USA pursuant to California ~~State Controller's Officer in accordance with California's Unclaimed Property Law~~ Code of Civil Procedure § 384.

8. What if I Dispute the Information on My Workweeks?

If you believe the information shown above regarding your workweeks is incorrect, you may challenge it with any documents or other supporting evidence sent to the Settlement Administrator. Any challenge must be postmarked by no later than **[THE RESPONSE DEADLINE]**.

The Settlement Administrator will presume that Defendant's records are correct but may change its calculations of your workweeks after considering your evidence. The Settlement Administrator's decision on your time worked is final and binding, meaning that it cannot be appealed.

9. What Are My Legal Rights and Options Under the Settlement?

Do Nothing	If you do nothing, you will receive a payment under the settlement if the Court finally approves the settlement. You will release all claims covered by the settlement. You do not have to do anything to receive a payment.
Exclude Yourself or "Opt Out"	If you do <u>not</u> wish to participate in the settlement or give up your right to sue on the Released Claims (described in Section 15 below), you may "opt-out" of the settlement of the class claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 12 for details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you (1) will <u>not</u> receive an Individual Settlement Payment, (2) will <u>not</u> give up your right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

Object to the Settlement	Any Class Member who does not request to be excluded from the settlement may object to the settlement. If you wish to object, you must <u>can</u> do so in writing and must state <u>by stating</u> the basis for your objection(s) -or you may appear at the Final Fairness Hearing to object in person. All <u>written</u> objections must include: (1) the objector's full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. To object, you <u>must</u> prepare and complete your objection, <u>sign it</u> and submit it to the Settlement Administrator. Alternatively, a Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. If the Court rejects your objection, you will be bound by the terms of the settlement, including the Released Claims, unless you have submitted a timely request to be excluded. But, Class Members who also qualify as PAGA Members cannot exclude themselves from the release of PAGA claims during the PAGA Period.
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10. What if I Have Questions?

If you have questions, please contact the lawyers for the Class Members or the Settlement Administrator. The Plaintiff's and Class Members' lawyers are:

GAINES & GAINES, APLC

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

~~Evan S. Gaines, Esq.~~

4550 E. Thousand Oaks Blvd., Suite 100

Westlake Village, CA 91362

(866) 550-0855

DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THE SETTLEMENT OR THE CLAIM PROCESS.

11. Who Is the Settlement Administrator?

The Settlement Administrator is a company hired by the Plaintiff and Defendant to administer the settlement. The Settlement Administrator's contact information is:

Settlement Administrator
ILYM Group
Mailing Address
Telephone Number

The Settlement Administrator's duties include processing challenges, objections and exclusions, making payments to the Class Members and PAGA Members, tax reporting, and getting answers to any questions you may have. The costs of administering the settlement, which are estimated not to exceed \$10,000, will be deducted from the gross settlement amount.

12. How Do I Opt-Out of the Class Settlement?

You will be treated as a Participating Class Member, participating fully in the settlement, unless you complete and send to the Settlement Administrator a letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number, your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE BUSTAMANTE V. MARRIOTT HOTEL SERVICES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Complete and send the Request for Exclusion directly to the Settlement Administrator at the address in Section 11 above, postmarked on or before **DATE**, 2024.

Any person who submits a valid and timely Request for Exclusion (1) will not receive an Individual Settlement Payment, (2) will not give up his/her right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement.

You cannot opt-out of the PAGA portion of the Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

13. How Will the Lawyers and the Representative for the Class Be Paid?

The lawyers for Plaintiff will request Court approval for payment of attorneys’ fees of up to ~~\$101,500~~96,666.67, plus reimbursement of actual litigation costs up to \$20,000. The Court decides whether or not to award attorneys’ fees. The attorneys’ fees are for legal services provided, and to be provided, to Plaintiff and the Class.

The lawyers for Plaintiff will also ask the Court to approve a class representative service award of ~~\$10,000~~4,500 to Plaintiff, for her time and willingness to accept the risks of bringing this case. This award would be in addition to the amount she is owed under the settlement as a Class Member and PAGA Member.

14. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

A Final Fairness Hearing will be held on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Theodore C. Zayner of the Santa Clara County Superior Court, Department ~~D17~~D19, located at 161 North First Street, San Jose, California 95113, to determine whether the proposed settlement is fair, reasonable, and adequate. The hearing may be continued without further notice.

You do not need to appear at this hearing unless you wish to object to the settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

15. What Is Being Released as Part of the Settlement?

If the Court gives the settlement final approval, the Class Members who have not opted out will fully release the Released Parties (described below), and each of them, of and from any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including ~~the date of Preliminary Approval~~ November 24, 2023. The “Released Claims” are defined as the claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the Second Amended Complaint in the Action or that could have been pleaded or asserted based upon the facts alleged in the Second Amended Complaint in the Action, including but not limited to local, state, and/or federal wage and hour claims, failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at all or at the proper rate of pay; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; unfair business practices; declaratory relief; penalties, including but not limited to PAGA penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys’ fees and costs. The Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the California Industrial Welfare Commission, including but not limited to Wage Order No. 5-2001; PAGA; California Business and Professions Code Section 17200, *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and 11070; California Code of Civil Procedure, including but not limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, *et seq.* The Released Claims also include claims for civil penalties that accrued during the PAGA Period under PAGA to the extent they were alleged or reasonably could have been alleged based on the factual allegations in the PAGA notice filed with the LWDA by Plaintiff or any pleadings filed in the Action by Plaintiff. Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* arising up through and including ~~Preliminary Approval~~ November 24, 2023 and reasonably related to any or all of the aforementioned claims. However, Released Claims exclude the release of claims not permitted by law.

Further, if the Court gives the settlement final approval, Plaintiff, the LWDA, and each and all PAGA Members, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including ~~the date of the Preliminary Approval Order~~ November 24, 2023 that have been or may be asserted under PAGA seeking civil penalties.

In addition to releasing the claims just mentioned against Defendant, Class Members who do not opt out, and PAGA Members, will also release claims against each of the Released Parties. The “Released Parties” are Defendant, the owners and operators of the Monterey Marriott, and each of them, and each of their past, present, and future parent companies, subsidiaries, related companies, and affiliates, and their respective shareholders, members, partners, representatives, fiduciaries, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendant, or any of them.

16. Can I Be Retaliated Against for Participating in the Settlement?

The law prohibits Defendant from retaliating against employees for exercising their rights under the law. Therefore, Defendant cannot and will not fire you, demote you, harass you, classify you as ineligible for rehire, or retaliate against you in any other way because you choose to participate, or not participate, in the settlement.

17. Getting More Information about the Settlement

This Notice contains a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Amended and Restated Settlement Agreement” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 161 North First Street San Jose, California 95113-~~77~~. You may also contact the Settlement Administrator by phone at [NUMBER] or Counsel for the Class, Gaines & Gaines, APLC, at (866) 550-0855. Please do not telephone the Court for information about this settlement or the claims process.

IMPORTANT:

- 1. If you move or change your address, send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
- 2. It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**

EXHIBIT D

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

**Electronically Filed
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Case #22CV400968
Envelope: 15666502**

Attorneys for Plaintiff Gabriela Bustamante
and Proposed Class Counsel

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

GABRIELA BUSTAMANTE, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC., a
Delaware corporation; and DOES 1
through 10 inclusive,

Defendants.

Case No. 22CV400968

*Assigned to the Hon. Theodore C. Zayner, Dept.
D19*

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
DANIEL F. GAINES IN SUPPORT OF
UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Date: July 3, 2024

Time: 1:30 p.m.

Dept.: D19

Action Filed: July 21, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Gabriela Bustamante
4 (“Bustamante” or “Plaintiff”) and proposed Class Counsel in this action. I have personal
5 knowledge of the facts set forth herein and if called as a witness to testify to them, I could and
6 would do so competently.

7 2. On May 8, 2024, the Court issued its Tentative Ruling (the “Ruling”) regarding
8 Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (the
9 “Motion”). A true and correct copy of the Ruling is attached hereto as **Exhibit A**. The Court’s
10 Ruling stated that no additional filings, other than this supplemental declaration, would be
11 permitted. The Parties are prepared to submit an Amended Proposed Order approving the Motion
12 after the hearing.

13 **Issues re: the Settlement and Class Notice:**

14 3. The Parties jointly prepared the Amended Notice of Proposed Class Action
15 Settlement and Class Action Settlement Hearing (“Amended Class Notice”). A true and correct
16 copy of the Amended Class Notice is attached as **Exhibit B**. A true and correct copy of the Redlined
17 Amended Class Notice is attached as **Exhibit C**.

18 4. After the hearing on the Motion, my office will submit an Amended Proposed Order
19 that states the Court-approved *cy pres* recipient. The Parties have agreed to designate UNICEF
20 USA as the *cy pres* as the recipient of unclaimed or abandoned class member funds pursuant to
21 Code of Civil Procedure § 384.

22 5. In negotiating the Settlement Agreement, the Parties agreed that the Class and
23 PAGA Periods would run through the date of preliminary approval. The Class and PAGA Periods
24 could be earlier than the date of preliminary approval only if Defendant elected to change it
25 pursuant to Paragraph 10.9 of the Settlement Agreement. See Paragraphs 1.6 and 1.19 of the
26 Settlement Agreement.

27 6. Defendant represented at mediation that there were approximately 33,000
28 workweeks by May 11, 2023. Mediation took place July 26, 2023. Paragraph 10.9 of the

1 Settlement Agreement is merely a clause to ensure that the workweek count used, in part, to
2 negotiate the settlement was accurate. If and only if the actual workweeks exceeded 37,950 by
3 July 26, 2023, then did Defendant have an option to adjust the end of the Class and PAGA periods.

4 7. Defendant has determined that as of July 26, 2023, the workweek count did not
5 exceed 37,950.

6 8. Therefore, the Parties request that the Class and PAGA periods run through the date
7 of Preliminary Approval as agreed upon.

8 9. The Parties also agreed to reduce the amount of attorneys' fees requested from 35%
9 to 33-1/3% of the \$290,000 Gross Settlement Amount and to reduce Plaintiff's service award
10 request from \$10,000 to \$4,500. The Parties have updated these numbers in the Amended Class
11 Notice and will also put these numbers in the to-be-filed Amended Proposed Order. My office will
12 submit lodestar information (including hourly rates and hours worked) and evidence of actual costs
13 incurred prior to the final approval hearing as part of our request for fees and costs.

14 10. Finally, as shown in the Redlined Amended Class Notice, the Parties have revised
15 the Amended Class Notice as follows: (1) revised section 5 to include the details regarding the
16 amount provided for Attorney's fees, litigation costs, service award, PAGA allocation, and
17 settlement administration costs under the terms of the settlement; (2) revised section 9 to state that
18 Class Members need not submit a written objection and may object to the Amended Settlement by
19 appearing at the final approval hearing; and (3) revised section 14 to include the language outlined
20 in the Court's Ruling.

21 **Counsel's Due Diligence and Settlement Negotiations:**

22 11. After engaging in informal discussions about the case, the Parties agreed to forego
23 formal discovery, engage in comprehensive informal discovery, and to engage in private mediation.

24 12. Specifically, my office requested, and Defendant informally produced, the number
25 of current and former Class Members, number of workweeks, number of pay periods, number of
26 current and former alleged aggrieved employees, and average rates of pay. Defendant also produced
27 Defendant's employee handbook, Plaintiff's personnel records, and a 25% sampling of time and
28 pay records for Class Members (which included 88 employees and 8,090 workweeks).

1 13. Prior to attending mediation, my office engaged an outside expert to analyze the
2 sampling of time and wage data which provided my office with details including, but not limited
3 to, when and if meal periods were taken, and the amount of underpaid overtime wages, meal and
4 rest period premiums, and sick pay wages due to Defendant's alleged failure to blend non-base
5 hourly wages into its employees' regular rate of pay.

6 14. Plaintiff and my colleagues were well-informed about the strengths and weaknesses
7 of Plaintiff's case after my office reviewed Defendant's written policies and relevant data, and
8 conducted a damages analysis based on data produced by Defendant.

9 15. Based on our independent investigation and evaluation, I am of the opinion that the
10 consideration and terms of the Settlement, considering the risk inherent in asserting and prevailing
11 on representative and class claims, and the risk of loss on the merits, is fair, reasonable, and
12 adequate in light of all known facts and circumstances, and is in the best interests of the Class. I
13 am also of the opinion that the total consideration and payment set forth in the Settlement is
14 adequate in light of the uncertainties surrounding the risk of further litigation, and the possible
15 defenses that Defendant has asserted and could assert.

16 **The Nature of Plaintiff's Claims and Risks of Continued Litigation:**

17 16. Defendant forcefully maintained that it enforced legally compliant policies and
18 procedures regarding meal and rest periods that provided all employees with proper, timely meal
19 and rest breaks, and any missed meal and rest periods were waived by employees on their own
20 volition. Additionally, as to Plaintiff's claim that Defendant failed to blend all non-base wages into
21 the regular rate of pay, Defendant also maintained numerous defenses to this claim, including that
22 the payments were discretionary, and that Class Members rarely earned any commissions or other
23 non-base hourly wages, so liability, if any, would be minimal. Data shows that wages were almost
24 always paid correctly at the proper rates. As discussed in my prior Declaration at paragraph 18, our
25 expert concluded that there was minimal, if any, underpayment of wages based on a miscalculation
26 of the regular rate of pay.

27 17. Additionally, the risks and costs of proceeding to trial and potential appeal warrant
28 further reduction of the value of the claims. Continued litigation would be expensive and would

1 result in a substantial delay and would likely reduce any recovery by Class Members. Plaintiff
2 contends that the risks in proceeding combined with the delays if the case were to go to trial or be
3 appealed significant favor settlement, especially a settlement which provides significant relief to
4 Class Members.

5 18. While Plaintiff states that she did not always receive a rest break, Defendant argues
6 that all employees were provided with ten-minute rest breaks as required by California law, and
7 that any failure to take an authorized break was a waiver thereof. My office gauged that it would
8 be difficult, if not impossible, through a survey process, to demonstrate a 100% violation rate for
9 rest breaks particularly where, as here, Defendant argues that rest breaks were indeed offered and
10 the written policies complied with California law. Based on the likelihood that Plaintiff would be
11 able to demonstrate some, but not all, rest breaks were not properly provided, she applies a projected
12 50% violation rate. If Plaintiff could prove a 50% violation rate, she could recover rest period
13 damages of up to \$2,247,000 and corresponding PAGA civil liability up to \$1,066,000. However,
14 this assumption is likely overstated. As discussed throughout, Defendant contends that any rest
15 periods not taken were waived, not denied.

16 19. Our expert calculated a miniscule meal period violation rate of 8% based on the time
17 and payroll data provided by Defendant. Based on this, Plaintiff could recover meal period damages
18 of up to \$293,736 and PAGA civil penalty liability for this claim of up to \$666,900. However, as
19 discussed above, Defendant provided my office with its legally compliant written policies and
20 maintained numerous defenses for this claim including, but not limited to, that any employee who
21 did not take a meal period voluntarily waived their right to do so. A small violation rate based on
22 time records is typically indicative of such a situation.

23 20. With respect to the derivate wage statement claim, predicated on Plaintiff and Class
24 Members allegedly not being paid all wages due during their employment, our expert calculated
25 that this claim was theoretically worth up to \$917,950 (calculated by taking 272 Class Members
26 who worked 18,868 pay periods from July 21, 2021 through July 26, 2023 [the “Wage Statement
27 Period”] and multiplying this number by \$50 for each initial violation and \$100 for each subsequent
28 violation) in addition to \$2,018,600 in PAGA civil penalties (calculated by assuming a violation

1 for all PAGA Pay Periods [for a total of 20,186 pay periods during the PAGA Period] and
2 multiplying that number by \$100). Defendant argued that Plaintiff would not prevail on her
3 underlying unpaid wage claims at all, so there would be no wage statement penalties awarded.
4 Defendant argued that employees were always appropriately compensated and suffered no injury,
5 such that a condition to recovery of penalties under Labor Code § 226 was not satisfied. What's
6 more, a recent California Supreme Court case has significantly undercut the viability of this claim,
7 particularly with respect to derivative wage statement claims, as alleged here. *See Naranjo v.*
8 *Spectrum Security Services, Inc.* (2024) 2024 WL 1979980.

9 21. Finally, Plaintiff asserted a second derivative claim for waiting time penalties under
10 Labor Code § 203 which was valued at up to \$719,508 in statutory penalties for approximately 158
11 former employees and \$9,900 in PAGA civil penalty liability for approximately 99 former
12 employees in the PAGA Period. This claim also faced substantial risk because of the good faith
13 defense proffered by Defendant.

14 22. My office did not have our expert compute separate damages based on the violation
15 of Business & Professions Code § 17200 claim (the "UCL claim") because it does not have any
16 independent value. The UCL claim is wholly predicated on the Labor Code violations alleged and
17 it simply extends the statute of limitations to four years; the value of the unpaid wage claims set
18 forth herein extend for the four-year limitations period available under the UCL.

19 23. Based on the calculations provided by expert, the estimated maximum amount of
20 damages and penalties that Class Members theoretically could be awarded at trial is approximately
21 \$4,178,194, inclusive of unpaid wages, waiting time penalties, and wage statement penalties. The
22 estimated maximum amount of PAGA civil penalties that Aggrieved Employees theoretically could
23 be awarded at trial is approximately \$3,761,400. However, my office believes that a more accurate
24 number for the PAGA penalties is \$2,018,600, based on one penalty per pay period at \$100 per
25 penalty. As discussed below, it is unlikely that this Court would allow for the "stacking" of PAGA
26 penalties, and therefore, this number is the most accurate estimation of potential maximum PAGA
27 civil penalties Defendant could be found liable for.

1 24. There were numerous risks to recovery here which required a compromise to resolve
2 the Action at this juncture of the litigation. Defendant argued that many of its employees rarely
3 received other non-base hourly wages, and when they did, all employees were properly
4 compensated for overtime, meal and rest period premiums, and sick pay wages (which was
5 separately confirmed by our expert). Defendant also forcefully maintained that it enforced legally
6 compliant policies and procedures regarding meal and rest periods that provided all employees with
7 proper, timely meal and rest breaks, and any missed meal and rest periods were waived by
8 employees. Defendant argued that no wage statement penalties or waiting time penalties would be
9 recovered because it paid all wages due, it acted in good faith at all times, and Class Members
10 suffered no actionable injury. It also took the position that PAGA penalties could not be stacked,
11 and the Court would likely exercise its discretion to reduce or eliminate them altogether, based on
12 the alleged weakness of the claims asserted. It also contended that a class could not be certified
13 because of manageability concerns, among other issues, particularly with respect to the claims for
14 meal and rest periods. Finally, Defendant argued that Plaintiff faced the risk that she would not
15 obtain a maximum damage/penalty award on all (or any of) her claims.

16 25. Defendant strongly contends that its policies and practices do not violate any laws.
17 It contends that it properly paid all wages and provided for all meal and rest periods and fully
18 compensated its employees for all time worked. It further contends that the wage statements it
19 provided to its employees are fully compliant with California law.

20 26. Defendant also contended that the Ninth Circuit has held that heightened PAGA
21 penalties are not appropriate where the defendant was not notified by the Labor Commissioner or
22 any court that it was committing any violation of the law. Further, based on my experience, courts
23 are often hesitant to award a heightened penalty where there is no prior citation by the Labor
24 Commissioner. Defendant was not notified by the Labor Commissioner or any court that it was
25 subject to the California Labor Code, and has not been previously cited by the Labor Commissioner
26 for Labor Code violations. Therefore, any violations prior to Plaintiff's LWDA letter are not subject
27 to heightened penalties.

1 27. Additionally, Defendant contended that there is no California authority that
2 expressly permits the practice of counting multiple PAGA violations/penalties that occur within
3 the same pay period. My office is aware of no court that has actually stacked such PAGA penalties
4 for multiple violations (meaning the “market” for PAGA settlements is based on no stacking of
5 penalties) and given the circumstances of this case, it is unlikely that this Court would impose a
6 massive penalty by stacking the PAGA penalty claims against Defendant. Although stacking
7 penalties is not unlawful, the majority of cases that address awards of PAGA penalties focus on the
8 court’s discretion to reduce awards. Based thereon, the non-stacking/one penalty per pay period is
9 an appropriate evaluation for maximum potential PAGA civil penalties exposure in this case.

10 28. Finally, Defendant contended it acted within the requirements of California law at
11 all times as to all Class Members and Aggrieved Employees. In particular, Defendant contends
12 that it paid all employees all wages due. Defendant also contended that it has compliant meal and
13 rest break practices. Defendant further contends that not every pay period at issue involved an
14 alleged Labor Code violation. Moreover, Defendant maintained that even if the Court did award
15 PAGA civil penalties, the Court could and would *substantially* reduce the penalties awarded based
16 on the discretionary factors contained in Labor Code § 2699(e)(2).

17 29. My office found Defendant’s defenses on these claims could be meritorious and
18 result in no recovery for Plaintiff and the Class. Further, the reasonable damages and/or penalties
19 that Class Members could expect to be awarded at trial are uncertain. Class certification is a
20 tremendous risk, and my office believes that the risk entailed in losing a class certification motion
21 is up to 50%, particularly as to the meal and rest break claims. All penalty claims alleged are wholly
22 derivative of the unpaid wage claims, such that if Plaintiff does not prevail on those claims, she
23 will not recover a penny of penalties (and these penalties represent a substantial portion of her
24 damage model). Accordingly, when the costs and risks of non-certification and loss on the merits
25 are considered, my office is of the opinion that the settlement reached is clearly a favorable one.

26 30. The table below shows the maximum potential recovery on each claim alleged by
27 Plaintiff and the realistic recovery on each such claim, as gauged by Plaintiff’s Counsel, applying
28 a 75% discount (representing a 50% discount for class certification risks and a 50% discount for

the risk of a loss on the merits). As to PAGA claims, Plaintiff's Counsel believes that there is at least a 50% risk of reduction of the penalties due to the Court's discretion to reduce them.

CLAIM	MAXIMUM POTENTIAL RECOVERY	REALISTIC RECOVERY
Rest Breaks	\$2,247,000	\$561,750
Meal Breaks	\$293,736	\$73,434
Wage Statements	\$917,950	\$229,487.50
Waiting Time Penalties	\$719,508	\$179,877
PAGA Penalties – All Claims	\$2,018,600	\$1,009,300
TOTAL:	\$6,196,794	\$2,053,848.50

The Settlement Terms in Light of These Risks:

31. Under the terms of the Settlement, Defendant will pay \$290,000 to resolve the Action. The settlement amount is approximately 14% of the risk-adjusted exposure in this case, a fair result when considering Defendant's significant defenses, and warranting this Court's approval.

32. The amount offered under the proposed Settlement provides a fair average per person net recovery for a wage-and-hour class action, especially in light of the narrow scope of the claims at hand (net payments will be approximately \$378.06 on average for each of the approximately 354 Class Members).

33. As discussed above, it is our judgment that Defendant's defenses to certification and liability are an important basis for validating the reasonableness of the settlement amount. Defendant has consistently maintained that it has ample legal and factual grounds for defending this action on both class and merits issues. Considering the risks going forward, the present settlement represents an excellent compromise of Plaintiff's and Class Members' claims.

34. The settlement for each participating Class Member is fair, reasonable, and adequate, given the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The fairness of the settlement is demonstrated by the uncertainty and risks to the Plaintiff and the Class both in not prevailing on one or more causes of action or theories alleged in the Complaint and in non-certification. Although we are confident that all of the elements necessary for certification are satisfied in this case, the risk of non-certification is always present. Defendant has adamantly disputed that Plaintiff will be able to certify any class and that the Class

1 Members were entitled to recovery under any of the theories alleged. If the Class were not certified,
2 most Class Members would likely not be able to pursue their individual claims against Defendant
3 because 1) their individual claims would not be large enough to provide incentive to litigate
4 individually, and 2) they may not know their claims even exist. Further, Defendant has indicated
5 it would consider a motion for summary judgment which poses an additional risk to Plaintiff. The
6 settlement takes these risks into account and is a good compromise for the damages of absent Class
7 Members.

8 35. Prosecution of this case will result in tangible benefits for the Class Members in the
9 following respects: (1) by this settlement, Class Members will receive their recoveries over a
10 reasonably short period of time as opposed to waiting additional years for the same, or a possibly
11 worse, result; and (2) settlement at this juncture will translate into significant savings in our
12 attorney's fees and costs which would have only increased exponentially had the case progressed
13 through trial, appeals, etc.

14 I declare, under penalty of perjury, under the laws of the State of California, that the
15 foregoing is true and correct. Executed on June 17, 2024 at Westlake Village, California.

16 
17 _____
18 DANIEL F. GAINES
19
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EXHIBIT A

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 19, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS

DATE: MAY 8, 2024

TIME: 1:30 P.M.

PREVAILING PARTY SHALL PREPARE THE ORDER

UNLESS OTHERWISE STATED (SEE [RULE OF COURT 3.1312](#))

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV387958	Beltran v. George Chiala Farms, Inc.	Rescheduled to June 12, 2024 at 1:30 p.m.
LINE 2	21CV382938	Adami v. Prime Now LLC (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	21CV376845	Showalter v. Northern California Chair Corporation (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	22CV396328	Garcia v. San Jose Water Company (Class Action/PAGA)	See Line 4 for tentative ruling.
LINE 5	22CV400968	Bustamante v. Marriott Hotel Services, Inc. (PAGA)	See Line 5 for tentative ruling.
LINE 6	22CV394401	Nguyen v. Port Plastics, Inc. (PAGA Representative Action) (Lead Case; Consolidated with 22CV394403/Class Action)	See Line 6 for tentative ruling.

Calendar Line 5

Case Name: Bustamante v. Marriott Hotel Services, Inc. (PAGA)
Case No.: 22CV400968

The above-entitled actions come on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

IX. INTRODUCTION

This putative class and representative action arises out of alleged wage-and-hour violations. Plaintiff Gabriela Bustamante (“Plaintiff”) filed her original complaint against defendant Marriott Hotel Services, Inc. (“Defendant”) on July 21, 2022. The complaint alleged a single cause of action under the Private Attorneys General Act of 2004 (“PAGA”).

Several months later, on November 17, 2022, Plaintiff filed a first amended complaint adding several class claims.

Defendant removed the action to federal court on December 16, 2022.

On September 14, 2023, Plaintiff filed the operative second amended complaint (“SAC”), which alleges the following causes of action: (1) Failure to Pay All Wages Due (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7; IWC Wage Order 5-2001); (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e)); (5) Failure to Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business and Professions Code § 17200; and (7) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558.

The same day, the federal court remanded the case to this court.

The parties have reached a settlement.

Plaintiff now moves for preliminary approval of the settlement. The motion is unopposed.

X. LEGAL STANDARD

Generally, “questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was

proper are matters addressed to the trial court's broad discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”

(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

“The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”

(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

III. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:
[a]ll individuals who are or who have been directly employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the Class Period.

(Declaration of Daniel F. Gaines in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement (“Gaines Dec.”), Ex. B (“Settlement Agreement”), ¶ 1.3.) The “Class Period” is defined as “the time from July 21, 2018 through the date on which the [c]ourt issues

the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9. (Settlement Agreement, ¶ 1.6.) Paragraph 10.9 of the settlement, entitled “Escalator Clause,” provides:

In connection with Mediation, Defendant estimated that as of May 11, 2023, there were approximately 33,000 weeks worked by Class Members. Mediation took place on July 26, 2023. The Parties agree that if, as of the end date of the pay period covering July 26, 2023, the number of weeks worked by Class Members was 37,950 weeks or more (i.e., if the number of weeks worked by Class Members as of the end date of the pay period covering July 26, 2023 is fifteen percent (15%) or more greater than 33,000 weeks worked), Defendant shall have the option to (i) pay a pro rata increase on the Settlement Amount to compensate for the overage; or (ii) end the Class Period and PAGA Period on the date that is one day before the date the total number of weeks worked by Class Members exceeds 37,950 weeks worked.

(Settlement Agreement, ¶ 10.9.)

The class also includes a subset of PAGA Members, who are defined as “all individuals who are or who have been employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the PAGA Period.” (Settlement Agreement, ¶ 1.17.) The “PAGA Period” is defined as “the time from July 21, 2021 through the date on which the [c]ourt issue the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9.” (Settlement Agreement, ¶ 1.19.)

According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement amount of \$290,000. (Settlement Agreement, ¶¶ 1.27.) The gross settlement amount includes attorney fees of \$101,500 (35 percent of the gross settlement amount), litigation costs not to exceed \$20,000, a service award for the class representative not to exceed \$10,000, settlement administration costs not to exceed \$10,000, and a PAGA allocation of \$25,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members). (Settlement Agreement, ¶¶ 1.16, 1.18, 1.27, 10.3, 10.4, 10.5, 10.6.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 10.2.) Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (Settlement Agreement, ¶¶ 1.12, 1.18, 10.4.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California State Controller's Office in accordance with California Unclaimed Property Law. (Settlement Agreement, ¶ 10.2.)

The parties' proposal to send funds from uncashed checks issued to class members to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class member funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." Plaintiff is directed to provide a new *cy pres* recipient in compliance with Code of Civil Procedure section 384 prior to the continued hearing date.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from claims that were asserted, or could have been asserted, in the operative SAC based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.1.) PAGA Members agree to release Defendant, and related persons and entities, from PAGA claims seeking civil penalties that were asserted, or could have been asserted, in the operative SAC based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.4.) Plaintiff also agrees to a general release of claims. (Settlement Agreement, ¶ 6.2.)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves claims on behalf of approximately 400 class members. (Gaines Dec., ¶¶ 26-27.) Prior to mediation, Plaintiff obtained informal discovery including a 25 percent data sample. (*Id.* at ¶ 11.) Plaintiff's counsel reviewed a representative sampling and engaged an expert to create a damages analysis. (*Id.* at ¶¶ 11-16.) The parties participated in private mediation with the Hon. Thierry Colaw (Ret.) on July 26, 2023, and reached a settlement. (*Id.* at ¶ 12.)

Upon review of the declaration from Plaintiff's counsel, it appears that Defendant's maximum potential exposure for the claims is \$7,939,594. (Gaines Dec., ¶¶ 13-25.) Plaintiff's counsel provides a breakdown of this amount by claim. Plaintiff's counsel assigns no value to

the first cause of action, which alleges that Defendant failed to properly compute all non-base hourly wages earned by putative class members into their regular rate of pay. (*Id.* at ¶¶ 17-18.) Plaintiff's counsel states that Plaintiff's expert concluded there was minimal, if any, underpayment of wages based on a miscalculation of the regular rate of pay and, therefore, Plaintiff was unlikely that recovery could be obtained on a group-wide basis and beyond nominal amounts per person. (*Id.* at ¶ 18.) With respect to the second cause of action, Plaintiff's counsel states that if Plaintiff could prove a 50 percent violation rate, Plaintiff could recover rest period damages of up to \$2,247,000 and PAGA penalties up to \$1,066,000. (*Id.* at ¶ 19.) Plaintiff's counsel estimates that the third cause of action for meal period violations would result in damages in the amount of \$293,736 and civil penalties in the amount of \$66,990. (*Id.* at ¶ 20.) With respect to the fourth cause of action, Plaintiff's counsel calculates the damages for the wage statement claim to be \$917,950 and the civil penalties to be \$2,018,600. (*Id.* at ¶ 21.) Plaintiff's counsel also concludes that the statutory penalties for the fifth cause of action are \$719,508 and the civil penalties are \$9,900. (*Id.* at ¶ 22.) Plaintiff's counsel does not provide any estimate for the value of the sixth cause of action, i.e., the UCL claim.

The settlement represents approximately 3.6 percent of the maximum potential value of Plaintiff's claims. The proposed settlement amount is below the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Ca. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

As a preliminary matter, the definitions of the class and PAGA Members are unreasonable because, as drafted, there is no clear end date for the Class Period and PAGA Period. Rather, as currently drafted, the Class Period and PAGA Period continue "through the date on which the [c]ourt issues the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9. (Settlement Agreement, ¶¶ 1.6, 1.19.) Paragraph 10.9 is the escalator clause in the settlement agreement and provides Defendant the option to either increase the settlement amount or change the Class Period or PAGA Period end date depending upon the number of workweeks worked as of the end date of the pay period

covering July 26, 2023. Consequently, at this point in time, there is no clear end date for the Class Period and PAGA Period. Moreover, it is possible that some of the class members who would initially receive notice might no longer be included in the settlement if Defendant elects an end date prior to the date on which the court issues the preliminary approval order. This court, however, will not give preliminary approval to a settlement that results in class members being told they are in the class, but later being told they are not in the class. Thus, Defendant will have to either rely on or take another look at its workweek estimate as of July 26, 2023 (i.e., the date of mediation), select a definite end date for the Class Period and PAGA Period, or select the increased payment option. If the parties want to preserve the option calling for a reduction of the Class Period and PAGA Period, rather than just an increase in the settlement amount, they must determine if the escalator clause applies before sending out the class notice, and have the class notice include the adjusted end date, such that it is not sent to non-participants.

Furthermore, the court has concerns regarding whether Plaintiff's discount of her claims is fair and reasonable. First, Plaintiff does not explain what, if any, informal discovery she obtained from Defendant other than a random 25 percent sampling of certain data. Plaintiff does not describe the specific time and/or payroll data that was provided by Defendant. Additionally, Plaintiff does not reveal whether she reviewed any other information (such as Defendant's policies and procedures, employee files, handbooks) or conducted interviews with potential witnesses. Next, Plaintiff does not provide any estimate of the average payment to be received by class members and PAGA Members. Furthermore, with respect to the second cause of action, it is unclear why Plaintiff's analysis is based on a 50 percent or a violation rate (i.e., whether Plaintiff's investigation and discovery revealed an actual violation rate of 50 percent). Furthermore, no analysis is provided with respect to the sixth cause of action. Lastly, it is unclear whether Plaintiff's valuation of the PAGA claim includes stacking penalties and whether the valuation is based on initial or subsequent violations.

Prior to the continued hearing, Plaintiff shall submit a supplemental declaration explaining in greater detail the informal discovery conducted by Plaintiff, how the maximum

potential value of each claim was calculated, the factual basis for and the rationale behind the discount applied to each of her claims, address whether the class members suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged wage and hour violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law.

C. Incentive Award, Fees, and Costs

Plaintiff requests a service award in the amount of \$10,000.

The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff filed a declaration specifically detailing her participation in the action. Plaintiff declares that she spent approximately 25 hours in connection with this action, including discussing the case with class counsel, providing class counsel information about Defendant's policies and procedures, gathering information and documents, and attending mediation. (Declaration of Gabriela Bustamante in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement, ¶¶ 6-9.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

However, the requested incentive award in the amount of \$10,000 appears to be excessive. The amount requested is substantially higher than the court typically awards for the amount of Plaintiff time spent in connection with this action (i.e., approximately 25). In light

of the foregoing, the court finds that a service award in the amount of \$4,500 is reasonable and it approves the award in that lesser amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of \$101,500 (35 percent of the gross settlement amount). The court notes that the percentage of the common fund sought by counsel is higher than the 33.33 percent typically awarded in wage and hour cases, and the increase does not appear to be warranted as the recovery achieved for the class is modest and not an unusually good result. Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of Class

Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a class “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” As interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

The “community-of-interest” requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of

establishing that class treatment will yield “substantial benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,
The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states there are approximately 400 class members that can be ascertained from Defendant’s records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. In sum, the court finds that the proposed class should be conditionally certified for settlement purposes..

E. Class Notice

The content of a class notice is subject to court approval. “If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, Section 5 must be amended to include details regarding the amount provided for attorney fees, litigation costs, service award, PAGA allocation, and settlement administration costs under the terms of the settlement.

In addition, Section 9 states that to object, a class member must submit an objection in writing. (Settlement Agreement, Ex. 1, ¶ 9 [“[i]f you wish to object, you must do so in writing ...”].) The parties must amend this portion of the notice to make clear that class members need not submit a written objection and may object to the settlement by appearing at the final approval hearing.

In addition, Section 14 of the class notice must be amended to include the following language:

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The amended notice shall be provided to the court for approval prior to the continued hearing.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is CONTINUED to July 3, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file a supplemental declaration with the additional information requested by the court no later than June 17, 2024. No additional filings are permitted.

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EXHIBIT B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
CLASS ACTION SETTLEMENT HEARING**

IMPORTANT LEGAL NOTICE

This is not an advertisement

Bustamante v. Marriott Hotel Services, Inc.

Superior Court for the County of Santa Clara, Case No. 22CV400968

**THIS NOTICE IS BEING SENT AS PART OF A SETTLEMENT FROM A COURT AND CONTAINS
IMPORTANT INFORMATION THAT MAY AFFECT YOU**

YOU ARE NOT BEING SUED

TO: ALL PERSONS EMPLOYED BY MARRIOTT HOTEL SERVICES, INC. (*now known as* MARRIOTT HOTEL SERVICES, LLC) AS A NON-EXEMPT EMPLOYEE AT THE MONTEREY MARRIOTT IN CALIFORNIA FOR ANY PORTION OF TIME BETWEEN JULY 21, 2018 AND [PA DATE] (THE “CLASS MEMBERS”)

1. Why Did I Receive This Notice?

A proposed settlement has been reached in a lawsuit that may affect your rights.

This lawsuit is against Marriott Hotel Services, Inc. (*now known as* Marriott Hotel Services, LLC) (referred to in this notice as “Defendant”). Gabriela Bustamante is a former employee of Defendant at the Monterey Marriott in California. She filed this lawsuit. This notice refers to Ms. Bustamante as “Plaintiff.”

You are receiving this notice because Defendant’s records indicate that you worked for Defendant at the Monterey Marriott in California as a non-exempt employee for some time between July 21, 2018 and [PA DATE] (“Class Period”). This means you are a potential Class Member, and you have a right to know about the proposed settlement. This notice explains the lawsuit, the proposed settlement, your legal rights, what payments may be available, and how to get them.

2. What Is the Lawsuit About?

Plaintiff filed a proposed class action lawsuit on behalf of herself and other Class Members. Plaintiff claims that Defendant violated California law by:

- (1) failing to pay all wages due;
- (2) failing to provide legally required rest periods;
- (3) failing to provide legally required meal periods;
- (4) failing to provide accurate wage statements;
- (5) failing to pay wages due at separation of employment;
- (6) violating Business and Professions Code § 17200 *et seq.*; and
- (7) violating the Private Attorneys General Act of 2004 (“PAGA”)

Plaintiff sought unpaid wages, interest, and penalties, as well as attorneys’ fees and costs for Class Members. Defendant denies each and every one of Plaintiff’s allegations, and believes that it has treated, and continues to treat, Class Members in accordance with all applicable laws at all times. The Court has not made any decision on whether the claims in this lawsuit have merit or not.

3. What Is a Class Action?

A class action lawsuit is a legal proceeding where one or more persons sue not just for themselves, but for other people who have similar claims (forming a “class” or group of people).

4. Background of Settlement

The claims in this case are contested. Defendant denies that it committed any wrongdoing. Plaintiff’s lawyers have received sufficient information from Defendant in order to evaluate the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses and reached a settlement with Defendant after extensive arm’s-length negotiations. The Court did not decide in favor of Plaintiff or Defendant.

Plaintiff and her lawyers believe the settlement is in the best interests of the Class Members considering the uncertain outcome, and the risks, costs, and time involved in further litigation, trial, and possible appeals.

5. What Are the Terms of the Proposed Settlement?

Defendant has agreed to pay a total of Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) (the “Settlement Amount”) to settle this case. This money will be divided among all Class Members. It will also be used to pay approximately \$96,666.67 in Plaintiff’s lawyers’ fees and no more than \$20,000 for Plaintiff’s lawyers’ costs of litigation, a payment in the amount of \$18,750.00 to the State of California Labor Workforce Development Agency for its share of penalties under PAGA, payment to the Plaintiff in the amount of \$4,500 for her service to the Class, and payment not to exceed \$10,000 to the Settlement Administrator for calculating and distributing payments.

6. How Much Will My Settlement Payment Be?

Individual Settlement Payments to Class Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California during the Class Period to the total number of weeks worked by all Class Members during the Class Period.

In addition, Individual PAGA Payments to PAGA Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California between July 21, 2021 and [PA DATE] (the “PAGA Period”) to the total number of weeks worked by all PAGA Members during the PAGA Period.

More detail on the formula for determining each Class Member’s share and each PAGA Member’s share has been provided to the Court and can be obtained from Class Counsel.

Based on Defendant’s records, you worked ____ workweeks **during the Class Period** and ____ workweeks **during the PAGA Period**.

Based on this data, your *estimated* settlement payment is shown in the chart below. This is just an estimate. Your final share will be determined by the Settlement Administrator.

Member	Time credited as a Class Member and PAGA Member	Your Estimated Share
Class Member	____ WORKWEEKS (During Class Period)	\$INSERT (Individual Settlement Payment)
PAGA Member	____ PAY PERIODS (During PAGA Period)	\$INSERT (Individual PAGA Payment)

For tax reporting purposes, 50% of the Individual Settlement Payment to Class Members will be assigned to wages, which are subject to legally required state and federal withholdings and deductions, reported on a form

W-2, and 50% to penalties, reported on an IRS Form 1099, with no withholding taken. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA Members will be issued an IRS Form 1099 for their Individual PAGA Payment.

7. When Will I Receive My Payment and What Do I Have To Do?

Class Members who do not opt out will be sent their Individual Settlement Payments and Individual PAGA Payments within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

Class Members who opt out of the settlement but who qualify as a PAGA Member, or for those who never were Class Members but are a PAGA Member, your Individual PAGA Payment will be sent within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

You must cash your check within 180 days of when the check is issued. The check will be void after 180 days, and the settlement provides that money will be distributed to [INSERT NAME OF CY PRES RECIPIENT] pursuant to California Code of Civil Procedure § 384.

8. What if I Dispute the Information on My Workweeks?

If you believe the information shown above regarding your workweeks is incorrect, you may challenge it with any documents or other supporting evidence sent to the Settlement Administrator. Any challenge must be postmarked by no later than [THE RESPONSE DEADLINE].

The Settlement Administrator will presume that Defendant's records are correct but may change its calculations of your workweeks after considering your evidence. The Settlement Administrator's decision on your time worked is final and binding, meaning that it cannot be appealed.

9. What Are My Legal Rights and Options Under the Settlement?

Do Nothing	If you do nothing, you will receive a payment under the settlement if the Court finally approves the settlement. You will release all claims covered by the settlement. You do not have to do anything to receive a payment.
Exclude Yourself or "Opt Out"	If you do <u>not</u> wish to participate in the settlement or give up your right to sue on the Released Claims (described in Section 15 below), you may "opt-out" of the settlement of the class claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 12 for details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you (1) will <u>not</u> receive an Individual Settlement Payment, (2) will <u>not</u> give up your right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

Object to the Settlement	Any Class Member who does not request to be excluded from the settlement may object to the settlement. If you wish to object, you can do so in writing by stating the basis for your objection(s) or you may appear at the Final Fairness Hearing to object in person. All written objections must include: (1) the objector's full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. To object, you <u>must</u> prepare and complete your objection, <u>sign it</u> and submit it to the Settlement Administrator. Alternatively, a Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. If the Court rejects your objection, you will be bound by the terms of the settlement, including the Released Claims, unless you have submitted a timely request to be excluded. But, Class Members who also qualify as PAGA Members cannot exclude themselves from the release of PAGA claims during the PAGA Period.
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10. What if I Have Questions?

If you have questions, please contact the lawyers for the Class Members or the Settlement Administrator. The Plaintiff's and Class Members' lawyers are:

GAINES & GAINES, APLC
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Evan S. Gaines, Esq.
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
(866) 550-0855

DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THE SETTLEMENT OR THE CLAIM PROCESS.

11. Who Is the Settlement Administrator?

The Settlement Administrator is a company hired by the Plaintiff and Defendant to administer the settlement. The Settlement Administrator's contact information is:

Settlement Administrator
ILYM Group Mailing Address Telephone Number

The Settlement Administrator's duties include processing challenges, objections and exclusions, making payments to the Class Members and PAGA Members, tax reporting, and getting answers to any questions you may have. The costs of administering the settlement, which are estimated not to exceed \$10,000, will be deducted from the gross settlement amount.

12. How Do I Opt-Out of the Class Settlement?

You will be treated as a Participating Class Member, participating fully in the settlement, unless you complete and send to the Settlement Administrator a letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number, your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE BUSTAMANTE V. MARRIOTT HOTEL SERVICES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Complete and send the Request for Exclusion directly to the Settlement Administrator at the address in Section 11 above, postmarked on or before **DATE**, 2024.

Any person who submits a valid and timely Request for Exclusion (1) will not receive an Individual Settlement Payment, (2) will not give up his/her right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement.

You cannot opt-out of the PAGA portion of the Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

13. How Will the Lawyers and the Representative for the Class Be Paid?

The lawyers for Plaintiff will request Court approval for payment of attorneys’ fees of up to \$101,500, plus reimbursement of actual litigation costs up to \$20,000. The Court decides whether or not to award attorneys’ fees. The attorneys’ fees are for legal services provided, and to be provided, to Plaintiff and the Class.

The lawyers for Plaintiff will also ask the Court to approve a class representative service award of \$10,000 to Plaintiff, for her time and willingness to accept the risks of bringing this case. This award would be in addition to the amount she is owed under the settlement as a Class Member and PAGA Member.

14. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

A Final Fairness Hearing will be held on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Theodore C. Zayner of the Santa Clara County Superior Court, Department D17, located at 161 North First Street San Jose, California 95113, to determine whether the proposed settlement is fair, reasonable, and adequate. The hearing may be continued without further notice.

You do not need to appear at this hearing unless you wish to object to the settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

15. What Is Being Released as Part of the Settlement?

If the Court gives the settlement final approval, the Class Members who have not opted out will fully release the Released Parties (described below), and each of them, of and from any and all Released Claims arising out of

employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including the date of Preliminary Approval. The “Released Claims” are defined as the claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the Second Amended Complaint in the Action or that could have been pleaded or asserted based upon the facts alleged in the Second Amended Complaint in the Action, including but not limited to local, state, and/or federal wage and hour claims, failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at all or at the proper rate of pay; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; unfair business practices; declaratory relief; penalties, including but not limited to PAGA penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys’ fees and costs. The Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the California Industrial Welfare Commission, including but not limited to Wage Order No. 5-2001; PAGA; California Business and Professions Code Section 17200, *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and 11070; California Code of Civil Procedure, including but not limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, *et seq.* The Released Claims also include claims for civil penalties that accrued during the PAGA Period under PAGA to the extent they were alleged or reasonably could have been alleged based on the factual allegations in the PAGA notice filed with the LWDA by Plaintiff or any pleadings filed in the Action by Plaintiff. Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* arising up through and including Preliminary Approval and reasonably related to any or all of the aforementioned claims. However, Released Claims exclude the release of claims not permitted by law.

Further, if the Court gives the settlement final approval, Plaintiff, the LWDA, and each and all PAGA Members, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including the date of the Preliminary Approval Order that have been or may be asserted under PAGA seeking civil penalties.

In addition to releasing the claims just mentioned against Defendant, Class Members who do not opt out, and PAGA Members, will also release claims against each of the Released Parties. The “Released Parties” are Defendant, the owners and operators of the Monterey Marriott, and each of them, and each of their past, present, and future parent companies, subsidiaries, related companies, and affiliates, and their respective shareholders, members, partners, representatives, fiduciaries, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendant, or any of them.

16. Can I Be Retaliated Against for Participating in the Settlement?

The law prohibits Defendant from retaliating against employees for exercising their rights under the law. Therefore, Defendant cannot and will not fire you, demote you, harass you, classify you as ineligible for rehire, or retaliate against you in any other way because you choose to participate, or not participate, in the settlement.

17. Getting More Information about the Settlement

This Notice contains a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 161 North First Street San Jose, California 95113.. You may also contact the Settlement Administrator by phone at [NUMBER] or Counsel for the Class, Gaines & Gaines, APLC, at (866) 550-0855. Please do not telephone the Court for information about this settlement or the claims process.

IMPORTANT:

- 1. If you move or change your address, send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
- 2. It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**

EXHIBIT C

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
CLASS ACTION SETTLEMENT HEARING**

IMPORTANT LEGAL NOTICE

This is not an advertisement

Bustamante v. Marriott Hotel Services, Inc.

Superior Court for the County of Santa Clara, Case No. 22CV400968

**THIS NOTICE IS BEING SENT AS PART OF A SETTLEMENT FROM A COURT AND CONTAINS
IMPORTANT INFORMATION THAT MAY AFFECT YOU
YOU ARE NOT BEING SUED**

TO: ALL PERSONS EMPLOYED BY MARRIOTT HOTEL SERVICES, INC. (*now known as* MARRIOTT HOTEL SERVICES, LLC) AS A NON-EXEMPT EMPLOYEE AT THE MONTEREY MARRIOTT IN CALIFORNIA FOR ANY PORTION OF TIME BETWEEN JULY 21, 2018 AND [PA DATE] (THE “CLASS MEMBERS”)

1. Why Did I Receive This Notice?

A proposed settlement has been reached in a lawsuit that may affect your rights.

This lawsuit is against Marriott Hotel Services, Inc. (*now known as* Marriott Hotel Services, LLC) (referred to in this notice as “Defendant”). Gabriela Bustamante is a former employee of Defendant at the Monterey Marriott in California. She filed this lawsuit. This notice refers to Ms. Bustamante as “Plaintiff.”

You are receiving this notice because Defendant’s records indicate that you worked for Defendant at the Monterey Marriott in California as a non-exempt employee for some time between July 21, 2018 and [PA DATE] (“Class Period”). This means you are a potential Class Member, and you have a right to know about the proposed settlement. This notice explains the lawsuit, the proposed settlement, your legal rights, what payments may be available, and how to get them.

2. What Is the Lawsuit About?

Plaintiff filed a proposed class action lawsuit on behalf of herself and other Class Members. Plaintiff claims that Defendant violated California law by:

- (1) failing to pay all wages due;
- (2) failing to provide legally required rest periods;
- (3) failing to provide legally required meal periods;
- (4) failing to provide accurate wage statements;
- (5) failing to pay wages due at separation of employment;
- (6) violating Business and Professions Code § 17200 *et seq.*; and
- (7) violating the Private Attorneys General Act of 2004 (“PAGA”)

Plaintiff sought unpaid wages, interest, and penalties, as well as attorneys’ fees and costs for Class Members. Defendant denies each and every one of Plaintiff’s allegations, and believes that it has treated, and continues to treat, Class Members in accordance with all applicable laws at all times. The Court has not made any decision on whether the claims in this lawsuit have merit or not.

3. What Is a Class Action?

A class action lawsuit is a legal proceeding where one or more persons sue not just for themselves, but for other people who have similar claims (forming a “class” or group of people).

4. Background of Settlement

The claims in this case are contested. Defendant denies that it committed any wrongdoing. Plaintiff’s lawyers have received sufficient information from Defendant in order to evaluate the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses and reached a settlement with Defendant after extensive arm’s-length negotiations. The Court did not decide in favor of Plaintiff or Defendant.

Plaintiff and her lawyers believe the settlement is in the best interests of the Class Members considering the uncertain outcome, and the risks, costs, and time involved in further litigation, trial, and possible appeals.

5. What Are the Terms of the Proposed Settlement?

Defendant has agreed to pay a total of Two Hundred Ninety Thousand Dollars and Zero Cents (\$290,000.00) (the “Settlement Amount”) to settle this case. This money will be divided among all Class Members. It will also be used to pay approximately \$96,666.67 in Plaintiff’s lawyers’ fees and no more than \$20,000 for Plaintiff’s lawyers’ ~~fees and~~ costs of litigation, a payment in the amount of \$18,750.00 to the State of California Labor Workforce Development Agency for its share of penalties under PAGA, payment to the Plaintiff in the amount of \$4,500 for her service to the Class, and ~~payments~~payment not to exceed \$10,000 to the Settlement Administrator for calculating and distributing payments.

6. How Much Will My Settlement Payment Be?

Individual Settlement Payments to Class Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California during the Class Period to the total number of weeks worked by all Class Members during the Class Period.

In addition, Individual PAGA Payments to PAGA Members will be determined by comparing the number of weeks that you worked as a non-exempt employee of Defendant at the Monterey Marriott in California between July 21, 2021 and [PA DATE] (the “PAGA Period”) to the total number of weeks worked by all PAGA Members during the PAGA Period.

More detail on the formula for determining each Class Member’s share and each PAGA Member’s share has been provided to the Court and can be obtained from Class Counsel.

Based on Defendant’s records, you worked ____ workweeks **during the Class Period** and ____ workweeks **during the PAGA Period**.

Based on this data, your *estimated* settlement payment is shown in the chart below. This is just an estimate. Your final share will be determined by the Settlement Administrator.

Member	Time credited as a Class Member and PAGA Member	Your Estimated Share
Class Member	____ WORKWEEKS (During Class Period)	<u>\$INSERT</u> (Individual Settlement Payment)
PAGA Member	____ PAY PERIODS (During PAGA Period)	<u>\$INSERT</u> (Individual PAGA Payment)

For tax reporting purposes, 50% of the Individual Settlement Payment to Class Members will be assigned to wages, which are subject to legally required state and federal withholdings and deductions, reported on a form

W-2, and 50% to penalties, reported on an IRS Form 1099, with no withholding taken. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA Members will be issued an IRS Form 1099 for their Individual PAGA Payment.

7. When Will I Receive My Payment and What Do I Have To Do?

Class Members who do not opt out will be sent their Individual Settlement Payments and Individual PAGA Payments within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

Class Members who opt out of the settlement but who qualify as a PAGA Member, or for those who never were Class Members but are a PAGA Member, your Individual PAGA Payment will be sent within 51 days after final court approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

You must cash your check within 180 days of when the check is issued. The check will be void after 180 days, and the settlement provides that money will be ~~deposited with the~~ distributed to [INSERT NAME OF CYPRES RECIPIENT] pursuant to California ~~State Controller's Officer in accordance with California's Unclaimed Property Law~~ Code of Civil Procedure § 384.

8. What if I Dispute the Information on My Workweeks?

If you believe the information shown above regarding your workweeks is incorrect, you may challenge it with any documents or other supporting evidence sent to the Settlement Administrator. Any challenge must be postmarked by no later than [THE RESPONSE DEADLINE].

The Settlement Administrator will presume that Defendant's records are correct but may change its calculations of your workweeks after considering your evidence. The Settlement Administrator's decision on your time worked is final and binding, meaning that it cannot be appealed.

9. What Are My Legal Rights and Options Under the Settlement?

Do Nothing	If you do nothing, you will receive a payment under the settlement if the Court finally approves the settlement. You will release all claims covered by the settlement. You do not have to do anything to receive a payment.
Exclude Yourself or "Opt Out"	If you do <u>not</u> wish to participate in the settlement or give up your right to sue on the Released Claims (described in Section 15 below), you may "opt-out" of the settlement of the class claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 12 for details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you (1) will <u>not</u> receive an Individual Settlement Payment, (2) will <u>not</u> give up your right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. If the settlement receives final approval from the court, Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue Released Claims that arose under PAGA during the PAGA Period.

Object to the Settlement	Any Class Member who does not request to be excluded from the settlement may object to the settlement. If you wish to object, you must <u>can</u> do so in writing and must state <u>by stating</u> the basis for your objection(s) -or you may appear at the Final Fairness Hearing to object in person. All <u>written</u> objections must include: (1) the objector's full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. To object, you <u>must</u> prepare and complete your objection, <u>sign it</u> and submit it to the Settlement Administrator. Alternatively, a Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. If the Court rejects your objection, you will be bound by the terms of the settlement, including the Released Claims, unless you have submitted a timely request to be excluded. But, Class Members who also qualify as PAGA Members cannot exclude themselves from the release of PAGA claims during the PAGA Period.
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10. What if I Have Questions?

If you have questions, please contact the lawyers for the Class Members or the Settlement Administrator. The Plaintiff's and Class Members' lawyers are:

GAINES & GAINES, APLC

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Evan S. Gaines, Esq.

4550 E. Thousand Oaks Blvd., Suite 100

Westlake Village, CA 91362

(866) 550-0855

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The Settlement Administrator is a company hired by the Plaintiff and Defendant to administer the settlement. The Settlement Administrator's contact information is:

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ILYM Group
Mailing Address
Telephone Number

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12. How Do I Opt-Out of the Class Settlement?

You will be treated as a Participating Class Member, participating fully in the settlement, unless you complete and send to the Settlement Administrator a letter/card postmarked no later than [REDACTED], 2024 with your full name, address, telephone number, last four digits of your social security number, your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE BUSTAMANTE V. MARRIOTT HOTEL SERVICES LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

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Any person who submits a valid and timely Request for Exclusion (1) will not receive an Individual Settlement Payment, (2) will not give up his/her right to sue on the Released Claims, and (3) will be barred from filing an objection to the settlement.

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The lawyers for Plaintiff will also ask the Court to approve a class representative service award of \$10,000 to Plaintiff, for her time and willingness to accept the risks of bringing this case. This award would be in addition to the amount she is owed under the settlement as a Class Member and PAGA Member.

14. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

A Final Fairness Hearing will be held on [REDACTED], at 8:30 a.m., in the Courtroom of Judge Theodore C. Zayner of the Santa Clara County Superior Court, Department D17, located at 161 North First Street San Jose, California 95113, to determine whether the proposed settlement is fair, reasonable, and adequate. The hearing may be continued without further notice.

You do not need to appear at this hearing unless you wish to object to the settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

15. What Is Being Released as Part of the Settlement?

If the Court gives the settlement final approval, the Class Members who have not opted out will fully release the Released Parties (described below), and each of them, of and from any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including the date of Preliminary Approval. The “Released Claims” are defined as the claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the Second Amended Complaint in the Action or that could have been pleaded or asserted based upon the facts alleged in the Second Amended Complaint in the Action, including but not limited to local, state, and/or federal wage and hour claims, failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at all or at the proper rate of pay; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; unfair business practices; declaratory relief; penalties, including but not limited to PAGA penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys’ fees and costs. The Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the California Industrial Welfare Commission, including but not limited to Wage Order No. 5-2001; PAGA; California Business and Professions Code Section 17200, *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and 11070; California Code of Civil Procedure, including but not limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, *et seq.* The Released Claims also include claims for civil penalties that accrued during the PAGA Period under PAGA to the extent they were alleged or reasonably could have been alleged based on the factual allegations in the PAGA notice filed with the LWDA by Plaintiff or any pleadings filed in the Action by Plaintiff. Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* arising up through and including Preliminary Approval and reasonably related to any or all of the aforementioned claims. However, Released Claims exclude the release of claims not permitted by law.

Further, if the Court gives the settlement final approval, Plaintiff, the LWDA, and each and all PAGA Members, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt position which arose at any time up through and including the date of the Preliminary Approval Order that have been or may be asserted under PAGA seeking civil penalties.

In addition to releasing the claims just mentioned against Defendant, Class Members who do not opt out, and PAGA Members, will also release claims against each of the Released Parties. The “Released Parties” are Defendant, the owners and operators of the Monterey Marriott, and each of them, and each of their past, present, and future parent companies, subsidiaries, related companies, and affiliates, and their respective shareholders, members, partners, representatives, fiduciaries, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendant, or any of them.

16. Can I Be Retaliated Against for Participating in the Settlement?

The law prohibits Defendant from retaliating against employees for exercising their rights under the law. Therefore, Defendant cannot and will not fire you, demote you, harass you, classify you as ineligible for rehire, or retaliate against you in any other way because you choose to participate, or not participate, in the settlement.

17. Getting More Information about the Settlement

This Notice contains a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 161 North First Street San Jose, California 95113.. You may also contact the Settlement Administrator by phone at [NUMBER] or Counsel for the Class, Gaines & Gaines, APLC, at (866) 550-0855. Please do not telephone the Court for information about this settlement or the claims process.

IMPORTANT:

- 1. If you move or change your address, send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
- 2. It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**

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_____ (For messenger) my business address is:

Greg S. Labate, Esq.
glabate@sheppardmullin.com
Eric Angel, Esq.
eangel@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
650 Town Center Drive, 10th Floor
Costa Mesa, CA 92626-1993

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.
I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 17, 2024, at Westlake Village, California.

Amelia Booth
AMELIA BOOTH

EXHIBIT E