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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

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

Date: May 8, 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 **Education and Experience:**

8 2. I obtained my BS degree from the University California at Berkeley in 2003. I
9 majored in Business Administration at the Haas School of Business.

10 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
11 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
12 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
13 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

14 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
15 Gaines, APLC. My father practiced law in California for over 40 years, emphasizing litigation for
16 the vast majority of his career. Our current practice specializes in litigation, with an emphasis in
17 employment disputes like this one. Over 95% of our practice is devoted to complex employment
18 litigation.

19 5. My firm has represented employees in complex employment matters such as this
20 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
21 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
22 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

23 **Factual and Procedural Background:**

24 6. On May 11, 2022, Plaintiff exhausted the pre-filing requirements of the Private
25 Attorneys General Act of 2004, Cal. Labor Code § 2698 *et seq.* (“PAGA”).

26 7. On July 21, 2022, Plaintiff initiated the Action by filing a representative action in
27 this Court against Defendant pursuant to PAGA. On November 17, 2022, Plaintiff filed her First
28 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.

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

9. The Class Representative contends that Defendant violated the California Labor Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class certification.

10. Defendant denies all of Plaintiff’s claims and denies that the case is appropriate or suitable for class or group-wide treatment.

Investigation and Settlement Discussions

11. My office conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data (including an approximately 25% data sample), and other facts and information provided by Defendant. My colleagues and I have investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

12. On July 26, 2023, the Parties participated in private mediation conducted by retired judge, Hon. Thierry Colaw (O.C. Sup. Ct., Ret.). The settlement discussions were conducted at arm’s length. The Parties reached an impasse at mediation, but the mediator successfully assisted the Parties to agree on a resolution of the Action through post-mediation discussions and

1 negotiations. The Settlement is the result of an informed and detailed analysis of the risks facing
2 all Parties in litigating this case, including but not limited to, careful consideration of the legal and
3 factual obstacles to Plaintiff's prospects of obtaining class certification and on the merits, and
4 Defendant's defenses, as well as Defendant's potential exposure and the additional costs of
5 litigating the Action.

6 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

7 **Litigation:**

8 13. Based on our independent investigation and evaluation, my colleagues and I are of
9 the opinion that settlement for the consideration and on the terms set forth in this Settlement
10 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
11 light of all known facts and circumstances, including the risk of significant delay, the risk the
12 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

13 14. The Parties agree that the Settlement Class described herein may be certified for
14 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
15 Settlement Class is for purposes of the Settlement only. If for any reason the Settlement is not
16 approved, the certification will have no force or effect and will immediately be revoked. The
17 Parties further agree that certification for purposes of the Settlement is in no way an admission
18 that class certification is proper under the more stringent standard applied for litigation and that
19 evidence of this limited Settlement Agreement for settlement purposes only will not be admissible
20 for any purpose in this or any other proceeding.

21 15. The parties jointly prepared the Settlement Agreement ("Settlement", or "Stip."). A
22 true and correct copy of the Settlement is attached hereto as **Exhibit B**.

23 16. In preparation for the mediation, my office retained the services of Berger
24 Consulting Group, a well renowned expert within the legal field, which performs expert data
25 analysis in employment and labor law matters.

26 17. Plaintiff contends that Defendant failed to properly compute all non-base hourly
27 wages (including banquet service charges) earned by Plaintiff and Class Members into their
28 regular rate of pay for purposes of paying them meal and rest period premiums and overtime wages

1 at the correct rates, in violation of Labor Code §§ 226.7, 510, 512, and 1194. Defendant paid
2 Plaintiff and Class Members non-base hourly wages (including banquet service charges) for
3 working specific shifts; however, Plaintiff alleged that Defendant failed to properly blend these
4 non-base hourly wages and instead paid Plaintiff and Class Members meal and rest period
5 premiums and overtime wages based only on the base hourly rate of pay, or at some other incorrect
6 rate below the proper rate, thus depriving Plaintiff and Class Members of all meal and rest period
7 premiums and overtime wages earned. Defendant denied these allegations and maintained that it
8 properly calculated the regular rate of pay for purposes of overtime wages and premium penalty
9 payments.

10 18. Discovery revealed that there was a low likelihood that Plaintiff and the Class would
11 prevail on this claim. Plaintiff's expert reviewed and analyzed a 25% sampling of time and wage
12 records of the Class and concluded that there was minimal, if any, underpayment of wages based
13 on a miscalculation of the regular rate of pay. Plaintiff valued this claim at a minimal value
14 because it was unlikely any recovery could be obtained on a group-wide basis and beyond nominal
15 amounts per person.

16 19. Plaintiff alleges that Defendant failed to provide Plaintiff and Class Members with
17 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
18 Labor Code §§ 226.7 and 558 and Wage Order 5-2001. Plaintiff argues that she and Class
19 Members were simply too busy to take their rest periods and would be required to work through
20 them. When they are able to take a rest period, Plaintiff contends that Class Members were
21 improperly prohibited from leaving Defendant's premises, thereby subjecting them to Defendant's
22 control during their rest periods. Plaintiff contends she was unable to leave the premises during
23 rest breaks (if provided) and was required to take her breaks in the break room only when they
24 were provided. Plaintiff states that she was affirmatively told that she was not allowed to leave
25 the premises during her rest periods. Defendant denies Plaintiff's allegations and contends it
26 authorized and permitted rest periods in accordance with California law. If Plaintiff could prove
27 a 50% violation rate, she believed she could recover rest period damages of up to \$2,247,000 with
28 corresponding PAGA civil penalty liability for this claim of up to \$1,066,000, but this assumes

1 overall success on the merits and does not take into account the discount factors discussed below.
2 These calculations were completed by Plaintiff's team based on the data provided by Defendant.

3 20. Plaintiff further contends that Defendant failed to permit or authorize Class
4 Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in
5 violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Labor Code § 512
6 provides that employers (like Defendant) may not employ an employee for a work period of more
7 than 5 hours without providing a 30-minute meal period starting no later than the end of the 5th
8 hour. Plaintiff argues that Class Members were routinely unable to take a proper meal period when
9 they worked shifts in excess of 5 hours in duration and a second meal period when they worked
10 shifts in excess of 10 hours in duration. Plaintiff further contends that when Plaintiff and Class
11 Members were able to take a meal period, they were oftentimes late or short. Defendant denies
12 Plaintiff's allegations and contends it provided reasonable opportunities for meal periods in
13 accordance with California law. Based on an analysis of the wage and time data provided by
14 Defendant through informal discovery, Plaintiff has ascertained a meal period compliance rate in
15 excess of 92% for shifts in excess of 5 hours (13,557 unique meal period violations). Plaintiff
16 calculates maximum classwide meal period damages at \$293,736, based on the data provided by
17 Defendant in advance of mediation and analyzed by Berger Consulting Group. Plaintiff also
18 calculated PAGA civil penalty liability for this claim of up to \$666,900, assuming success on the
19 merits and without regard to any discount factors. In order to be awarded PAGA penalties,
20 Plaintiff would have had to succeed on the merits first. There is always a risk that Plaintiff would
21 have been unable to prove the Defendant's policies and practices were unlawful, thus a risk of no
22 recovery on the PAGA claims.

23 21. Plaintiff argues that Defendant failed to issue Class Members accurately itemized
24 wage statements. As detailed above, Plaintiff alleges that Class Members were not paid all
25 premium meal and rest period wages due on a derivative basis. As such, Plaintiff argues that the
26 wage statements provided by Defendant failed to accurately state all gross wages earned, in
27 violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code
28 §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Defendant denied
3 these allegations and maintained it properly issued accurate and itemized wage statements in
4 compliance with Labor Code § 226. Provided Plaintiff was able to establish her underlying wage-
5 hour violations and there were no discounts, Plaintiff calculates the damages for this derivative
6 claim at an additional \$917,950 in addition to \$2,018,600 in PAGA civil penalties.

7 22. Finally, Plaintiff alleges that Defendant failed to pay Class Members all wages due
8 upon separation of employment, also on a derivative basis, in violation of Labor Code §§ 201-202.
9 As Defendant allegedly failed to pay Plaintiff and Class Members all premium wages due during
10 the course of employment, as discussed above, and these wages remained due and owing upon
11 separation of employment. Defendant denies this claim. In the event Plaintiff succeeded on the
12 merits of her underlying wage-hour claims, Plaintiff calculates statutory penalties on this claim at
13 \$719,508, with PAGA civil penalty liability of \$9,900.

14 23. A discount was required to resolve this matter at this juncture of the litigation. It is
15 possible that Plaintiff would not prevail on her meal and rest period premium theories, such that
16 Class Members would recover nothing. It is also possible that Plaintiff would not successfully
17 certify a class, which would also yield a net zero result for Class Members. Even if Plaintiff did
18 prevail on class certification and on the merits of her claims, it is possible that she would not be
19 able to demonstrate the damages she contends were incurred for meal and rest period premiums
20 and all penalties she seeks. The penalties sought – for inaccurate wage statements, waiting time
21 and PAGA – eclipse the value of damages sought and are wholly derivative and subject to
22 independent defenses, including for willfulness, good faith, and injury. PAGA penalties are
23 discretionary and are rarely “stacked.” In short, numerous defenses that Defendant proffers could
24 eliminate some – if not all – of Plaintiff’s claims. This tremendous risk required a discount for
25 settlement purposes, and justifies the compromised settlement amount.

26 24. When the costs and risks of non-certification and loss on the merits are considered,
27 my colleagues and I are of the opinion that the Settlement reached is clearly a favorable one.
28

1 25. The Settlement for each Class Member is fair, reasonable and adequate, given the
2 inherent risk of litigation, the risk relative to class certification and success on the merits, and the
3 costs of pursuing such litigation. The Settlement shall finally resolve all claims of the Class
4 Members as alleged in the Action.

5 **Class Certification Requirements:**

6 26. To date, no class has been certified. The Stipulation of Settlement contains a
7 provision pursuant to which we stipulate to the Court's provisional certification of the
8 approximately 400-member Settlement Class, but do so for purposes of this settlement only.

9 27. In this case, the Class Members are defined as Defendant's non-exempt employees
10 and as such are identifiable from Defendant's records. Further, the Settlement Class is sufficiently
11 numerous to warrant certification. According to Defendant's records, the Class comprises
12 approximately 400 members.

13 28. The Settlement Class Members' claims all stem from a common source: alleged
14 violations by Defendant of the same Labor Code provisions in connection with their employment.
15 All members of the Class seek the same relief under the same California laws (including Labor
16 Code §§ 201, 202, 226(a), 226.7, 510, 512, 558, 1194, 2698, and 2699, among other Labor Code
17 provisions and derivative claims). Under these circumstances, the commonality requirement is
18 satisfied for purposes of certifying the Settlement Class for settlement purposes.

19 29. In this case, Plaintiff and proposed Class Representative Gabriela Bustamante is a
20 former non-exempt employee who worked for Defendant at the Monterey Marriott in the State of
21 California during the Class Period. She contends that Defendant failed to pay all wages, failed to
22 provide meal and rest periods, failed to comply with itemized employee wage statement
23 provisions, and failed to timely pay wages at the separation of employment, in violation of Labor
24 Code §§ 201, 202, 226(a), 226.7, 510, 512, 558, 1194, 2698, and 2699, among other Labor Code
25 provisions. She has the same claims as those that the members of the Settlement Class would
26 reasonably be expected to bring based on the course of conduct alleged herein.

27 30. Specifically, the Parties agree for purposes of settlement only that Plaintiff is
28 adequate to represent the Settlement Class because she was employed by Defendant during the

1 Class Period, experienced the same wage and hour practices as the rest of the Class, understands
2 her duties as a Class Representative, has been willing to undergo the risks of litigation, will
3 aggressively and competently assert the interests of the proposed Settlement Class, and has no
4 apparent conflicts with of interest.

5 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

6 31. Concurrently with the filing of this Motion, my office is transmitting the Settlement
7 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
8 2699(1)(2). Evidence of submission is attached hereto as **Exhibit C**.

9 I declare, under penalty of perjury, under the laws of the State of California, that the
10 foregoing is true and correct. Executed this 2nd day of January, 2024 at Westlake Village,
11 California.

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

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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8 pursuant to Labor Code § 2698 *et seq.*

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SERVICES, LLC
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SANTA CLARA

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

20 Plaintiffs,

21 v.

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

24 Defendants.
25
26
27
28

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

SETTLEMENT AGREEMENT

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

SETTLEMENT AGREEMENT

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

7 1. **DEFINITIONS**

8 1.1 The term “Action” means the action entitled Gabriela Bustamante, et al. v. Marriott
9 Hotel Services, Inc., Case No. 22CV400968 (Santa Clara County Superior Court).

10 1.2 The term “Agreement” refers to this Settlement Agreement.

11 1.3 The terms “Class” or “Class Members” means all individuals who are or who have
12 been directly employed by Defendant in California at the Monterey Marriott as a non-exempt
13 employee during any portion of the Class Period.

14 1.4 The term “Class Counsel” means Gaines & Gaines, APLC.

15 1.5 The term “Class List and Data” means the name, last known mailing address, Social
16 Security number, number of Workweeks for each Class Member during the Class Period, and
17 number of PAGA Workweeks for each PAGA Member during the PAGA Period.

18 1.6 The term “Class Period” means the time from July 21, 2018 through the date on
19 which the Court issues the Preliminary Approval Order, or an earlier date as Defendant may elect
20 pursuant to Paragraph 10.9.

21 1.7 The term “Court” means the Superior Court of California, County of Santa Clara.

22 1.8 The term “Defendant” or “Marriott” means Defendant Marriott Hotel Services, Inc.
23 (*now known as* Marriott Hotel Services, LLC).

24 1.9 The “Effective Date” of the Settlement will be the last to occur of the following:

25 (a) if there are no objections to the Settlement, then the date on which the Court enters the Final
26 Approval Order; (b) if one or more timely objections has/have been filed and not withdrawn, then
27 upon passage of the applicable date for an objector to seek appellate review of the Final Approval
28 Order; or (c) if an appeal, review or writ is sought from the Final Approval Order, the day after the

1 Final Approval Order is affirmed or the appeal, review or writ is dismissed or denied, and the Final
2 Approval Order is no longer subject to further judicial review.

3 1.10 The term "Final Approval Order" means the order of the Court that grants final
4 approval of the Settlement.

5 1.11 The term "Final Judgment" means the final judgment entered by the Court based
6 upon the Settlement.

7 1.12 The term "Individual PAGA Payment" means the PAGA Member's pro-rata share of
8 the portion of the PAGA Payment allocated to PAGA Members pursuant to Section 10 below.

9 1.13 The term "Individual Settlement Payment" means the amount to be paid to a
10 Participating Class Member from the Net Settlement Amount pursuant to Section 10 below.

11 1.14 The term "Mediator" means Hon. Thierry Colaw (Ret.).

12 1.15 The term "Monterey Marriott" means the hotel located at 350 Calle Principal,
13 Monterey, CA 93940.

14 1.16 The term "Net Settlement Amount" means the Settlement Amount minus the Court-
15 approved Attorneys' Fees, Litigation Costs and Expenses, Service Award to Plaintiff, Settlement
16 Administration Costs, and PAGA Payment.

17 1.17 The term "PAGA Member(s)" means all individuals who are or who have been
18 employed by Defendant in California at the Monterey Marriott as a non-exempt employee during
19 any portion of the PAGA Period.

20 1.18 The term "PAGA Payment" means the payment made to the LWDA and PAGA
21 Members for civil penalties pursuant to PAGA and the terms of this Agreement.

22 1.19 The term "PAGA Period" means the time from July 21, 2021 through the date on
23 which the Court issues the Preliminary Approval Order, or an earlier date as Defendant may elect
24 pursuant to Paragraph 10.9.

25 1.20 The term "PAGA Workweek(s)" refers to the week(s) during the PAGA Period in
26 which a PAGA Member worked for Defendant at the Monterey Marriott.

27 1.21 The term "Participating Class Members" means Class Members who have not timely
28 requested exclusion from the Settlement.

1 1.22 The term "Parties" means Plaintiff and Defendant, collectively.

2 1.23 The term "Party" means Plaintiff or Defendant, individually.

3 1.24 The term "Plaintiff" means Plaintiff Gabriela Bustamante.

4 1.25 The term "Preliminary Approval Order" means the order of the Court that grants
5 preliminary approval of the Settlement.

6 1.26 The term "Settlement Administrator" means ILYM Group, Inc. ("ILYM"), the third-
7 party settlement administrator agreed upon by Parties to administer this Settlement.

8 1.27 The term "Settlement Amount" means the amount of Two Hundred Ninety
9 Thousand Dollars and Zero Cents (\$290,000.00), inclusive of the Attorneys' Fees and Litigation
10 Costs and Expenses incurred by Class Counsel, the Settlement Administration Costs, the Service
11 Award to Plaintiff, and the PAGA Payment to the State of California Labor Workforce and
12 Development Agency ("LWDA") and PAGA Members, but excluding the employer portion of any
13 applicable payroll taxes. The Settlement Amount excludes any pro-rata overages that may be
14 required as set forth in Paragraph 10.9.

15 1.28 The term "Workweek(s)" refers to week(s) during the Class Period in which a Class
16 Member worked for Defendant at the Monterey Marriott.

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

18 2.1 On July 21, 2022, Plaintiff initiated the Action by filing a representative action
19 against in this Court against Defendant pursuant to the Private Attorneys General Act of 2004
20 ("PAGA"). On November 17, 2022, Plaintiff filed her First Amended Complaint against
21 Defendant, which added proposed class claims. On December 16, 2022, Defendant removed the
22 Action to the United States District Court for the Northern District of California.

23 2.2 On July 26, 2023, the Parties participated in private mediation conducted by the
24 Mediator, an experienced and respected former judge ("Mediation"). The settlement discussions
25 were conducted at arm's length. The Parties reached an impasse at Mediation, but the Mediator
26 successfully assisted the Parties to agree on a resolution of the Action through post-Mediation
27 discussions and negotiations. The Settlement is the result of an informed and detailed analysis of
28 the risks facing all Parties in litigating this case, including but not limited to, careful consideration

1 of the legal and factual obstacles to Plaintiff's prospects of obtaining class certification and on the
2 merits, and Defendant's defenses, as well as Defendant's potential exposure and the additional costs
3 of litigating the Action.

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

14 2.4 This Agreement is intended to and does effectuate the full, final, and complete
15 resolution of the Action.

16 2.5 The Parties believe that continued litigation would be protracted, expensive, and
17 uncertain, and that this Settlement is in the best interests of the Class, PAGA Members, and
18 Defendant. In light of these realities, the Parties believe that this Settlement is the best way to
19 resolve the disputes between them.

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

21 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
22 includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the
23 Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the
24 Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of
25 the terms of this Agreement and all orders and judgments entered in connection therewith, pursuant
26 to California Rules of Court Rule 3.769, *et seq.* and California Code of Civil Procedure Section
27 664.6, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting,
28 implementing, and enforcing the Settlement embodied in this Agreement and all orders and

1 judgments entered in connection therewith. The Parties and their counsel agree that a court, upon
2 motion, may enter judgment pursuant to the Agreement and California Code of Civil Procedure
3 Section 664.6 and the Agreement is admissible in evidence for purposes of enforcement pursuant to
4 California Evidence Code Section 1123. The Agreement will be interpreted and enforced under the
5 laws of the State of California without regard to its conflict of laws provisions. Any dispute arising
6 out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
7 exclusively in the Court, and the Parties hereby consent to the jurisdiction of the Court over them
8 solely in connection therewith.

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

10 4.1 The Parties agree that this Agreement reflects their good faith compromise of the
11 Action, based upon their assessment of the mutual risks and costs of further litigation and the
12 assessments of their respective counsel. This Agreement does not constitute, is not intended to
13 constitute, and will not be deemed to constitute, an admission of liability or lack of liability by the
14 Parties as to the merits, validity, or accuracy of any of the allegations or claims made against
15 Defendant in the Action or the appropriateness of class certification. Defendant denies each of
16 Plaintiff's allegations in their entirety and alleges that Plaintiff and all other Class Members and
17 PAGA Members were provided compensation and treated in all respects in accordance with
18 California law with regard to the claims and facts alleged in the Second Amended Complaint.

19 4.2 Nothing in this Agreement, nor any action taken or made in implementation thereof,
20 including, without limitation, any statements, discussions, communications, or any materials
21 prepared, exchanged, issued, or used during the course of the negotiations leading up to the
22 Agreement, is intended by the Parties to or will constitute, be introduced, or be submitted in any
23 way in the Action or any other judicial, arbitral, administrative, investigative or other forum or
24 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
25 regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding
26 the foregoing, the Agreement may be used in any proceeding in the Court that has as its purpose the
27 interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the
28 Court entered into in connection therewith. Additionally, insofar as any of the foregoing material is

1 required to be filed by any Court, by Court order, the Parties will comply with such order but will
2 notify the other Party of such an order at least ten (10) days prior to filing of the documents.

3 4.3 The Parties agree that Plaintiff's forthcoming motion for preliminary approval of the
4 Settlement, which will, among other things, seek certification of the Class, is for purposes of the
5 Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification
6 will have no force or effect. The Parties agree that certification for purposes of the Settlement is in
7 no way an admission that class certification is proper under the standard applied to contested
8 certification motions and that this Agreement will not be submitted in this or any other proceeding
9 as evidence that (i) the Class should be certified, or (ii) Defendant is liable to Plaintiff or any of the
10 Class Members or PAGA Members. Further, neither this Agreement nor the Court's actions with
11 regard to this Agreement will be submitted in any court or other tribunal regarding the propriety of
12 class certification or collective treatment for purposes other than the settlement of the Action. In
13 the event that this Agreement is not approved by the Court or any appellate court, is terminated, or
14 otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected
15 in any way, any of its objections or defenses in the Action, including, but not limited to, its defenses
16 in opposition to class certification.

17 5. **CLASS CERTIFICATION**

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

21 6. **RELEASE AND WAIVER**

22 6.1 **Release and Waiver of Claims by Participating Class Members**

23 Participating Class Members, and their heirs, successors, assigns, and/or agents, and each of
24 them, upon the Effective Date, and subject to Defendant's payment of the Settlement Amount and
25 by operation of the Final Approval Order, shall fully and finally release and discharge Defendant,
26 the owners and operators of the Monterey Marriott, and each of them, and each of their past,
27 present, and future parent companies, subsidiaries, related companies, and affiliates, and their
28 respective shareholders, members, partners, representatives, fiduciaries, agents (including, without

1 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity
2 sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or
3 future officers, directors and employees), and each of their predecessors, successors, heirs, and
4 assigns, and any individual or entity which could be jointly liable with Defendant, or any of them
5 (collectively, the "Released Parties"), from any and all Released Claims arising out of employment
6 at the Monterey Marriott in a non-exempt position which arose at any time up through and
7 including the date of Preliminary Approval. For purposes of this Agreement, the "Released
8 Claims" are defined as the claims, debts, liabilities, demands, actions, or causes of action pleaded or
9 asserted in the Second Amended Complaint in the Action or that could have been pleaded or
10 asserted based upon the facts alleged in the Second Amended Complaint in the Action, including
11 but not limited to local, state, and/or federal wage and hour claims, failure to pay all wages due,
12 including minimum wages, straight time compensation, overtime compensation, double-time
13 compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods
14 and/or rest periods; failure to pay proper meal and/or rest period penalties at all or at the proper rate
15 of pay; payment for all hours worked, including off-the-clock work; failure to provide accurate
16 itemized wage statements; failure to timely pay all wages during employment; failure to timely pay
17 all wages due at separation of employment; unfair business practices; declaratory relief; penalties,
18 including but not limited to PAGA penalties, wage statement penalties, minimum-wage penalties,
19 and waiting-time penalties; interest; and attorneys' fees and costs. The Released Claims also
20 expressly include all claims arising under the California Labor Code (including but not limited to
21 Sections 200-204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 552, 558, 1174,
22 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the
23 California Industrial Welfare Commission, including but not limited to Wage Order No. 5-2001;
24 PAGA; California Business and Professions Code Section 17200, *et seq.*; the California Civil Code,
25 including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and
26 11070; California Code of Civil Procedure, including but not limited to Section 1021.5; and the
27 FLSA, 29 U.S.C. Section 201, *et seq.* The Released Claims also include claims for civil penalties
28 that accrued during the PAGA Period under PAGA to the extent they were alleged or reasonably

1 could have been alleged based on the factual allegations in the PAGA notice filed with the LWDA
2 by Plaintiff or any pleadings filed in the Action by Plaintiff.

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

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

12 **6.2 General Release and Waiver of Claims by Plaintiff**

13 As of and subject to the occurrence of the Effective Date, and subject to Defendant's
14 payment of the Settlement Amount, and in exchange for the Service Award described in Section
15 10.3, Plaintiff, on behalf of herself and her heirs, successors, assigns, and/or agents, and each of
16 them, fully and finally releases the Released Parties, and each of them, from any and all claims,
17 whether asserted or unasserted, known and unknown, unforeseen, unanticipated, unsuspected or
18 latent, which Plaintiff or any of her heirs, successors, assigns, and/or agents has at any time owned
19 or held prior to the date of execution of this Agreement, under federal, state and/or local law,
20 statute, ordinance, regulation, common law, or other source of law, including but not limited to
21 claims arising from or in any way related to her employment with Defendant and/or her
22 compensation while an employee of Defendant ("Plaintiff's Released Claims"). Plaintiffs'
23 Released Claims include, but are not limited to, all claims arising from or related to the Action; all
24 claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
25 compensation, overtime compensation, double-time compensation, and interest; the calculation of
26 the regular rate of pay; wages related to alleged illegal rounding; missed meal periods and rest
27 periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay;
28 reimbursement for all business expenses; payment for all hours worked, including off-the-clock

1 work; inaccurate wage statements; unauthorized or improper deductions; failure to keep accurate
2 records; unfair business practices; penalties, including, but not limited to, meal/rest period penalties,
3 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
4 penalties; and attorneys' fees and costs; all claims arising under the California Labor Code
5 (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
6 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8,
7 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
8 1194.2, 1197, 1197.1, 1197.2, 1198, 2802, 2698 et seq., and 2699 et seq.); all claims arising under
9 the Wage Orders of the California Industrial Welfare Commission; PAGA; California Business and
10 Professions Code section 17200, et seq., the California Civil Code (to include, but not limited to,
11 sections 3287, 3336 and 3294); 12 CCR § 11040; 8 CCR § 11060; California Code of Civil
12 Procedure § 1021.5, the California common law of contract, the FLSA, 29 U.S.C. § 201, et seq.,
13 federal common law, and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.;
14 all claims for lost wages and benefits, emotional distress, punitive damages, other damages, and
15 attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment,
16 retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C.
17 section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the
18 Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and
19 the law of contract and tort. This release excludes the release of claims not permitted by law.
20 Plaintiff's Released Claims include all claims, whether known or unknown. Plaintiff stipulates and
21 agrees that, upon the Effective Date, Plaintiff shall be deemed to have, and by operation of the Final
22 Approval Order shall have, expressly waived and relinquished, to the fullest extent permitted by
23 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
24 similar provision under federal or state law, which provides:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
26 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
27 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
28 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR

1 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
2 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

16 6.3 Waiver of Age Claims

17 This Agreement constitutes a knowing and voluntary waiver of any and all rights or claims
18 that Plaintiff has or may have under the Federal Age Discrimination In Employment Act, as
19 amended by the Older Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621 et seq.
20 ("ADEA"). This paragraph and this Agreement are written in a manner calculated to be understood
21 by Plaintiff. Plaintiff has been previously advised in writing to consult with an attorney before
22 signing this Agreement. Plaintiff covenants and agrees that she has previously had a reasonable
23 time of up to 21 days in which to consider signing this Agreement. Plaintiff covenants and agrees
24 that she knowingly and voluntarily decided not to use all 21 days and waived any claim that
25 Plaintiff was not given the 21-day period or did not use the entire 21 days to consider this
26 Agreement. Plaintiff may revoke this Agreement as to the ADEA and only with respect to her
27 release of any age claims she has or may have against any of the Released Parties at any time within
28 the 7-day period following the date Plaintiff signs this Agreement by providing written notice of

1 revocation to Tyler Z. Bernstein, Sheppard Mullin Richter & Hampton LLP, 650 Town Center
2 Drive, 10th Floor, Costa Mesa, California 92626; email: tbernstein@sheppardmullin.com, so that
3 said revocation notice is received before the expiration of the 7-day revocation period. In the event
4 of a revocation by Plaintiff pursuant to this paragraph, and if Defendant chooses not to rescind this
5 Agreement in its entirety, the Agreement shall remain fully effective in all other respects; however,
6 the Service Award to Plaintiff shall be reduced by Four Thousand Dollars and Zero Cents
7 (\$4,000.00), attributable to the ADEA claim.

8 6.4 Release and Waiver of Claims By PAGA Members

9 Upon the Effective Date, subject to Defendant's payment of the Settlement Amount, and by
10 operation of the Final Approval Order, Plaintiff, the LWDA, and each and all PAGA Members, on
11 behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be
12 deemed to have fully and finally released and discharged the Released Parties, and each of them, of
13 any and all Released Claims arising out of employment at the Monterey Marriott in a non-exempt
14 position which arose at any time up through and including the date of the Preliminary Approval
15 Order that have been or may be asserted under PAGA seeking civil penalties.

16 7. NOTICE AND OPPORTUNITY TO OPT OUT OR OBJECT

17 7.1 Notice to the Class

18 The Parties submit a Notice of Class Action Settlement ("Class Notice"), in the form
19 attached hereto as "Exhibit 1," to the Court for approval. The Class Notice will include,
20 nonexclusively, information regarding the nature of the Action; a summary of the substance of the
21 Settlement; the definition of the Class and PAGA Members; the formula used to determine the
22 Individual Settlement Payments for the Participating Class Members and Individual PAGA
23 Payments for PAGA Members; the number of Workweeks and PAGA Workweeks credited to each
24 Class Member and PAGA Member, respectively; the estimated Individual Settlement Payment
25 and/or Individual PAGA Payment; the procedures and deadlines for objecting to the Settlement,
26 seeking exclusion from the Settlement (except PAGA Members shall have no right to exclude
27 themselves from the PAGA portion of the Settlement), and/or disputing the number of Workweeks
28 or PAGA Workweeks credited to them; and the date for the Final Approval Hearing.

1 To determine the estimated Individual Settlement Payment for each Class Member for
2 purposes of the Notice, the Settlement Administrator will divide each Class Member's respective
3 Workweeks by the total workweeks worked by all Class Members during the Class Period, and will
4 multiply the resulting figure by the Net Settlement Amount. To determine the estimated Individual
5 PAGA Payment for each PAGA Member, the Settlement Administrator will divide each PAGA
6 Member's respective PAGA Workweeks by the total workweeks worked by all PAGA Members
7 during the PAGA Period, and will multiply the resulting figure by the portion of the PAGA
8 Payment (\$6,250.00) allocated to PAGA Members.

9 7.2 Mailing of the Class Notice

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

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

23 If, within thirty (30) calendar days of the Initial Mailing, a Class Notice is returned with a
24 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
25 the Settlement Administrator shall forward the original Class Notice to the updated address via
26 first-class regular U.S. mail indicating on the Class Notice the date of such re-mailing. If a Class
27 Notice is returned within thirty (30) calendar days of the Initial Mailing as undeliverable without a
28 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,

1 the Settlement Administrator will promptly attempt to determine the correct address using a skip-
2 trace search, and will perform a single re-mailing to any addresses located indicating the date of the
3 re-mailing on the Class Notice. Those Class Members who receive a re-mailed Class Notice (as a
4 result of the Settlement Administrator locating an updated address by way of skip-trace search,
5 forwarding address provided by the post office, or request from the Parties or Class Members), will
6 have the later of (a) fifteen (15) calendar days from the date the Class Notice is re-mailed or (b) the
7 Response Deadline to postmark a Request for Exclusion, objection, or dispute regarding
8 Workweeks or PAGA Workweeks to the Settlement Administrator ("Extended Response
9 Deadline").

10 In the event that the procedures in this Section are followed and the intended recipient of a
11 Class Notice still does not receive the Class Notice, the intended recipient shall be bound by all
12 terms of the Settlement and any Final Approval Order and Final Judgment entered by the Court if
13 the Settlement is approved by the Court. In the event the procedures in this Section are followed
14 and a Class Member does not ultimately return a Request for Exclusion and/or the Request for
15 Exclusion is rejected by the Settlement Administrator, the Class Member shall be deemed a
16 Participating Class Member and will be bound by all terms of the Settlement and any Final
17 Approval Order and Final Judgment entered by the Court if the Settlement is approved by the
18 Court.

19 7.3 Objection to the Settlement

20 A Participating Class Member may object to the Settlement. To assert an objection to the
21 Settlement, a Participating Class Member must submit an objection to the Settlement Administrator
22 by first class U.S. mail at the address specified on the Class Notice, not later than the Response
23 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The date
24 of the postmark will be the exclusive means for determining whether an objection has been timely
25 submitted. All objections must be in writing, which includes: (1) the objector's full name, address,
26 last four digits of his or her Social Security number, and signature; (2) the case name and number;
27 (3) the factual and legal basis, with supporting documents, if any, on which the objection is based;
28 (4) whether the objector is represented by an attorney and providing the contact information of any

1 such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. The
2 Parties agree that the Settlement Administrator shall not disclose the last four digits of any
3 objecting Class Member's Social Security number to anyone but the Parties, that such information
4 will be securely held, and that the disclosure of those last four digits to the Parties shall not be used
5 for any purpose except to ascertain the identity of the objector for administration of this Settlement.
6 Any person who fails to timely submit their written objections in the manner specified above may
7 still appear and object at the Final Approval Hearing. If a Participating Class Member objects to
8 this Settlement, the Participating Class Member will remain a member of the Class for Settlement
9 purposes, and if the Court grants final approval of the Settlement, he or she will be bound by the
10 terms of the Settlement and any Final Approval Order and Final Judgment. Within three (3)
11 business days of receipt of an objection, the Settlement Administrator shall provide counsel for the
12 Parties with a copy of the objection. No later than fourteen (14) calendar days before the Final
13 Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a
14 complete list of Participating Class Members who have submitted an objection. Prior to the Final
15 Approval Hearing, the Settlement Administrator shall submit copies of the objections that it has
16 received, to the Court by way of declaration.

17 7.4 Request for Exclusion from the Settlement

18 Class Members who wish to exclude themselves from the Settlement must submit a valid
19 and timely request for exclusion ("Request for Exclusion") to the Settlement Administrator by mail,
20 postmarked on or before the Response Deadline or, in the instance of a re-mailed Class Notice, the
21 Extended Response Deadline. The date of the postmark on the return mailing envelope will be the
22 exclusive means for determining whether a Request for Exclusion has been timely submitted. A
23 Request for Exclusion must be in writing which contains: (1) the Class Member's full name, current
24 address, last four digits of his/her Social Security number; (2) the case name and number; (3) a clear
25 statement that the Class Member wishes to be excluded from the Settlement; and (4) the Class
26 Member's signature and the date of signature. With respect to Class Members who submit a
27 Request for Exclusion, the Parties agree that the Settlement Administrator shall not disclose the last
28 four digits of any such Class Member's Social Security number to anyone but the Parties, that such

1 information will be securely held, and that the disclosure of those last four digits to the Parties shall
2 not be used for any purpose except to ascertain the identity of the individual who wishes to exclude
3 himself or herself from the Settlement for administration of this Settlement. The name and last four
4 digits of the Social Security number provided by the Class Member on the Request for Exclusion
5 must match Defendant's records as provided to the Settlement Administrator, or match Defendant's
6 records for that particular Class Member. The name and Social Security number provided by the
7 Class Member will be deemed to match Defendant's records only if: (1) both the first name and the
8 last name and the last four digits of the Social Security number provided by the Class Member
9 match Defendant's records; (2) the first name and the last four digits of the Social Security number
10 provided by the Class Member match Defendant's records and it appears the last name has been
11 changed as a result of a change in marital status or is a shortened or lengthened version of the name
12 that appears in Defendant's records; or (3) the last four digits of the Social Security number and last
13 name match Defendant's records and the first name provided is either a nickname or a shortened or
14 lengthened version of the name that appears in Defendant's records. Each Class Member who does
15 not submit a Request for Exclusion in compliance with this paragraph will be deemed to be a
16 Participating Class Member. Participating Class Members will be bound by all terms of the
17 Agreement and the Final Approval Order and Final Judgment. Any Class Member who submits a
18 timely, valid Request for Exclusion will not be a Participating Class Member, will not be entitled to
19 receive any Individual Settlement Payment, and will not be bound by this Agreement or have any
20 right to object, appeal, or comment thereon; provided, however, that the Parties agree there is no
21 statutory or other right for any Class Member or PAGA Members to opt out or otherwise exclude
22 himself or herself from the PAGA portion of the Settlement. A Class Member who submits a valid
23 and timely Request for Exclusion and who is also a PAGA Member shall still receive his or her
24 Individual PAGA Payment and shall be bound by the release of the PAGA claims during the PAGA
25 Period.

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

1 If a Class Member submits both a Request for Exclusion and written objection to the
2 Settlement Administrator prior to the Response Deadline, the Settlement Administrator will first
3 attempt to contact the Class Member(s) to determine if they intended to submit only the Request for
4 Exclusion or written objection. If the Settlement Administrator is unable to contact the Class
5 Member(s) within ten (10) calendar days of receiving both the Request for Exclusion and written
6 objection or if the Class Member(s) fails to respond to the Settlement Administrator within ten (10)
7 calendar days of being contacted, then only the Request for Exclusion will be deemed valid. The
8 Class Member(s)' written objection will be invalid, and the Class Member will no longer be
9 considered a Participating Class Member, will not receive his or her Individual Settlement Payment,
10 and will not be bound by the release of Released Claims (but will still have fully and finally
11 released and discharged the Released Parties of all Released Claims arising during the PAGA
12 Period that may be asserted under PAGA).

13 7.5 No Solicitation of Objections to or Exclusions from the Settlement

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

20 8. DEFENDANT'S RIGHT TO RESCIND

21 If either (i) 10% or more of the Class Members, or, (ii) a number of Class Members whose
22 Individual Settlement Payments in the aggregate are 10% or more of the Settlement Amount, either
23 opt out of and/or object to the Settlement, or if both (i) and (ii) occur, Defendant may, at its
24 election, rescind the Settlement and all actions taken in its furtherance of it will be thereby null and
25 void. If Defendant exercises this right of recession, it must do so in writing, sent to Class Counsel
26 by email to attorneys@gaineslawfirm.com and overnight mail, addressed to: Daniel Gaines of
27 Gaines & Gaines, APLC, 4550 East Thousand Oaks Blvd., Ste. 100, Westlake Village, CA 91362.
28 If the option to rescind is exercised, Defendant must exercise it no later than five (5) court days

1 prior to the Final Approval Hearing, and Defendant shall be solely responsible for all Settlement
2 Administration Costs accrued to that point. If such provision is exercised, the Action will return to
3 its pre-settlement litigation posture.

4 9. **DISPUTES REGARDING WORKWEEKS**

5 The Class Notice mailed to each Class Member will indicate the Workweeks and PAGA
6 Workweeks credited to each Class Member and the estimated Individual Settlement Payment and/or
7 Individual PAGA Payment that he/she is to receive based upon Defendant's records and the
8 formula set forth in Section 10 below. If a Class Member disputes the Workweeks and/or PAGA
9 Workweeks credited to him or her, as stated in the Class Notice, the Class Member must submit
10 written correspondence to the Settlement Administrator that is postmarked no later than the
11 Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response
12 Deadline, explaining the basis for the dispute and including any supporting documentation showing
13 that the Workweeks and/or PAGA Workweeks credited to him or her is inaccurate. Defendant's
14 records will be presumed determinative, absent credible evidence to rebut the accuracy of the
15 Workweeks and/or PAGA Workweeks credited to a Class Member based thereon. The Settlement
16 Administrator will evaluate the evidence submitted by the Class Member and make a
17 recommendation to the Parties as to which figures should be applied. If the Parties disagree with
18 the Settlement Administrator's recommendation, the dispute will be presented to the Court for
19 determination.

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

21 10.1 **Settlement Amount**

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

10.2 Distribution to the Participating Class Members

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

Participating Class Members will have one hundred eighty (180) calendar days from the date on which the Individual Settlement Payment and/or Individual PAGA Payment check is issued, to cash or deposit such check(s). If an Individual Settlement Payment and/or Individual PAGA Payment check is not cashed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is cashed or deposited within the original 180 day check cashing period, the check(s) will expire and become non-negotiable, and offering to replace the check(s) if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 180 day check cashing period, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and pay the amount of the Individual Settlement Payment(s) and/or Individual PAGA Payment(s) to the California State Controller's Office in accordance with California Unclaimed Property Law in the name of the Participating Class Member(s) and/or PAGA Members, as an alternative distribution for which there is good cause, under Code of Civil Procedure § 384(b).

10.3 Service Award to Plaintiff

Plaintiff will apply to the Court for a service award of no more than \$10,000 (the "Service Award"), to be paid out of the Settlement Amount. Defendant will not oppose such an application, so long as it is consistent with the provisions of this Agreement. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless the

Released Parties from any claim or liability for taxes, penalties or interest arising as a result of the payment. Plaintiff is solely responsible for providing a completed IRS W-9 form to the Settlement Administrator prior to distribution. The Settlement Administrator will issue to Plaintiff an IRS Form 1099 reflecting the Service Award.

10.4 PAGA Payment

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

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

10.5 Attorneys' Fees and Litigation Costs and Expenses

Class Counsel shall be entitled to apply to the Court for attorneys' fees payable to Class Counsel in the amount of up to 35% of the Settlement Amount, which is estimated to be \$101,500.00 ("Attorneys' Fees"), and litigation costs and expenses in an amount not to exceed \$20,000.00 ("Litigation Costs and Expenses"). The amounts set forth above for Attorneys' Fees and Litigation Costs and Expenses will cover all work performed and all fees and costs incurred by Class Counsel to date, and all work to be performed and all fees to be incurred in connection with the litigation of the Action, seeking preliminary and final approval by the Court of this Settlement and Agreement, the administration of the Settlement, seeking and obtaining a Preliminary Approval

1 Order and Final Approval Order, and obtaining Final Judgment. Class Counsel is solely
2 responsible for providing completed IRS W-9 forms to the Settlement Administrator prior to
3 distribution. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel
4 reflecting the awarded Attorneys' Fees and Litigation Costs and Expenses. Should Plaintiff and/or
5 Class Counsel request a lesser amount for Attorneys' Fees and/or the Court approves a lesser
6 amount, the difference between the lesser amount and the requested 35% (estimated to be
7 \$101,500.00) will be a part of the Net Settlement Amount. Should Plaintiff and/or Class Counsel
8 request a lesser amount for its Litigation Costs and Expenses and/or the Court approves a lesser
9 amount, the difference between the lesser amount and \$20,000.00 will be added to the Net
10 Settlement Amount. Class Counsel will not be permitted to petition the Court for, or accept, any
11 additional payments from Defendant for attorneys' fees, costs, or expenses in connection with the
12 Action. Class Counsel shall assume full responsibility and liability for the payment of taxes due on
13 such awards.

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

21 **10.6 Settlement Administrator**

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

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

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

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

26 **10.7 Time for Funding of the Settlement**

27 Prior to the Effective Date of the Settlement, Defendant will not be required to fund the
28 Settlement, in whole or in part, through the Settlement Administrator or any third party. Within

1 twenty one (21) calendar days after the Effective Date, Defendant shall provide the Settlement
2 Administrator with sufficient funds to make all the payments required under this Settlement.

3 10.8 Time for Distribution

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

10 10.9 Escalator Clause

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

20 10.10 Allocation

21 All Individual Settlement Payments will be allocated as follows: 50% as wages ("wage
22 portion") and 50% as penalties, any other non-taxable items, and interest. The wage portion of each
23 Individual Settlement Payment will be subject to W-2 reporting and, therefore, normal employee's
24 share of payroll taxes and withholdings will be deducted pursuant to applicable state and federal
25 law. Defendant shall be responsible for paying employer-side taxes separately from the Settlement
26 Amount. Participating Class Members will be issued an IRS Form 1099 for the portion of their
27 Individual Settlement Payments that is treated as interest and penalties and any other non-taxable
28 items and will assume full responsibility and liability for the payment of taxes due on such awards,

1 if any. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA
2 Members will be issued an IRS Form 1099 for their Individual PAGA Payment and will assume full
3 responsibility and liability for the payment of taxes due on such awards, if any. The Parties make
4 no representations about the tax consequences to the portion of the Individual Settlement Payments
5 representing interest and penalties.

6 11. **INTEREST**

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

9 12. **TAXATION**

10 12.1 It is the sole obligation of Plaintiff, each of the Participating Class Members, and
11 each of the PAGA Members to pay appropriate federal, state, and local income taxes on any
12 amounts they receive under this Agreement that lawfully qualify as taxable income.

13 12.2 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
16 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
18 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
19 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
20 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
21 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
22 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
23 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
24 ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
25 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
4 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 13. **COURT APPROVAL**

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

19 13.2 If the Court does not grant preliminary approval and/or final approval of the
20 Settlement, or if the Court's Final Approval Order and Final Judgement are reversed or materially
21 modified on appeal, then this Settlement will become null and void.

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

1 14. **MISCELLANEOUS PROVISIONS**

2 14.1 **No Effect on Regular Rate or Overtime Compensation**

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

12 14.2 **No Effect on Employee Benefits**

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

25 14.3 **Headings**

26 The descriptive headings of any paragraphs or sections of this Agreement are inserted for
27 convenience of reference only and do not constitute a part of this Agreement.
28

1 14.4 Final Agreement

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

8 14.5 Amendment or Modification

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

11 14.6 Counterparts/Facsimile

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

16 14.7 Authority

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

28 14.8 Binding on Successors and Assigns

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

3 14.9 Interim Stay of Proceedings.

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

7 14.10 Fair, Adequate, and Reasonable Settlement.

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

11 14.11 Cooperation and Drafting

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

15 14.12 Invalidity of Any Provision

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

19 14.13 Plaintiff's Waiver of Right to Be Excluded

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

26 14.14 Publicity

27 Plaintiff and Class Counsel, and each of them, agree that they (i) will keep the fact, amount
28 or terms of the Settlement strictly confidential (except as required by law or Court order and only

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

13 14.15 Defense

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

18 14.16 Final Judgment

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

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

Executed on: 11 / 08 / 2023



PLAINTIFF GABRIELA BUSTAMANTE

Executed on: 11/17/2023

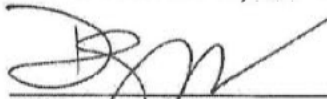
DocuSigned by:



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

GAINES & GAINES, APLC

Executed on: 11/8/2023



DANIEL GAINES

EVAN GAINES

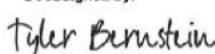
ALEX KATOFISKY

For Plaintiff Gabriela Bustamante and the Class

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Executed on: 11/15/2023

DocuSigned by:



GREG S. LABATE

TYLER Z. BERNSTEIN

For Defendants Marriott Hotel Services, Inc. (now
known as Marriott Hotel Services, LLC)

Title	Signature for Declaration
File name	Bustamante Decl v1.docx
Document ID	8645e131a655c53de4bbabbb833bd7154143df75
Audit trail date format	MM / DD / YYYY
Status	Signed

Document history

 SENT	12 / 20 / 2023 20:27:33 UTC	Sent for signature to Gabriela Bustamante from office@gaineslawfirm.com
 VIEWED	12 / 20 / 2023 20:27:43 UTC	Viewed by Gabriela Bustamante
 SIGNED	12 / 20 / 2023 20:31:47 UTC	Signed by Gabriela Bustamante
 COMPLETED	12 / 20 / 2023 20:31:47 UTC	The document has been completed.

EXHIBIT 1

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] (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 for Plaintiff’s lawyers’ fees and costs of litigation, a payment to the State of California Labor Workforce Development Agency for its share of penalties under PAGA, payment to the Plaintiff for her service to the Class, and payments 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 deposited with the California State Controller's Officer in accordance with California's Unclaimed Property Law.

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 do so in writing and must state the basis for your objection(s). All 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 must prepare and complete your objection, sign it 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.

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 _____, 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.

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.**

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QUESTIONS? Call 1-XXX-XXX-XXX

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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