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Attorney for Plaintiff ERIK FOSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

ERIK FOSS, an individual, and on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

ANDERSON HOSPITALITY, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendant.

Case No. 195317

Complaint Filed: July 2, 2020

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ., IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 7, 2022

Time: 8:30 a.m.

Judge: Hon. Stephen H. Baker

Dept.: 3

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter “Class Counsel”). I am counsel of record for Plaintiff ERIK FOSS, (hereafter “Plaintiff”) in this wage and hour class action filed against ANDERSON HOSPITALITY, INC. (hereinafter collectively “Defendant”).

2. This declaration is being submitted in support of Plaintiff’s motion for Preliminary Approval of Class Action Settlement.

I. EXHIBITS

3. Attached hereto as **Exhibit “1”** is a true and correct copy of the fully executed Joint the Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement” or “Settlement Agreement”). Attached as **Exhibit “A”** to the Agreement is a true and correct copy of the proposed Class Notice.

4. Attached hereto as **Exhibit “2”** is a true and correct copy of the proof of filing with the Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class Counsel’s compliance with California Labor Code Section 2699(l)(2).

II. INTRODUCTION

5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length, and after conducting a mediation with Judge William Pate (Ret.). The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class. Given there are approximately 104 Settlement

1 Class Members, and assuming 100% participation, the average gross settlement recovery is
2 approximately **\$342.95** (Net Settlement Amount divided by Settlement Class Members)

3 6. As discussed below, the proposed Settlement satisfies all criteria for preliminary
4 settlement approval under California law and falls within the range of reasonableness. The average
5 Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour
6 class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification.
7 Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

8 **III. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation**

10 7. Defendant operates a Best Western hotel in Anderson, California.

11 8. Plaintiff worked for Defendant as an hourly, non-exempt front desk clerk during 2020. As
12 a non-exempt employee, Plaintiff was entitled to minimum wages, overtime wages, and compliant meal
13 and rest breaks (which Defendant contends he properly received). Throughout his employment, Plaintiff
14 was subject to Defendant's written policies and practices.

15 9. Generally, Plaintiff claims that Defendant failed to pay him for all hours worked, failed to
16 provide complaint meal and rest periods, failed to provide accurate itemized wage statements, and failed
17 to pay all wages due at the time of his separation. Defendant denies liability for each of Plaintiff's claims.
18 Further, Defendant asserts that it fully complied with all applicable employment laws and raised several
19 other significant defenses to Plaintiff's claims, including but not limited to, compliant meal and rest
20 period policies and practices, on-duty meal break agreements, and arbitration agreements with class
21 action waivers.

22 10. On April 24, 2020, Plaintiff served Defendant and the Labor and Workforce Development
23 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
24 the facts and theories supporting Defendant's alleged violations of various provisions of the California
25 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
26 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698
27 et seq ("PAGA").
28

1 11. On July 2, 2020, Plaintiff filed a class action complaint in the Shasta County Superior
2 Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay
3 minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to
4 pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide
5 required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide
6 required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to provide
7 accurate itemized wage statements in violation of California Labor Code section 226; (7) failure to
8 provide wages when due in violation of California Labor Code sections 201, 202 and 203; and (8)
9 violations of the California Labor Code Private Attorney General Act (“PAGA”). In response,
10 Defendant filed a motion to compel Plaintiff’s claims to arbitration, however Defendant’s motion was
11 denied. Thereafter, Defendant answered the Complaint.

12 12. Plaintiff commenced written discovery in Defendant 2020, including interrogatories,
13 requests for production, and requests for admissions. The Parties also engaged in the *Belaire-West* notice
14 procedure and Defendant produced the Class Members contact information to Plaintiff’s Counsel.
15 Plaintiff’s Counsel subsequently conducted interview with many of the Class Members. Thereafter, the
16 Parties agreed to mediate this action. In anticipation of mediation, the Parties stipulated to stay further
17 formal discovery. To prepare for mediation, Defendant agreed to informally produce certain documents
18 and data points subject to the mediation privilege, including but not limited to, a sample of the Class
19 Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained the Berger Consulting
20 Group, to analyze Defendant’s time and payroll data.

21 13. On June 1, 2021, the Parties participated in a full day mediation with (Ret.) Hon. William
22 Pate. After arms-length negotiations and bargaining, the mediation concluded without a settlement.
23 However, following the mediation after months of negotiations with Judge Pate’s assistance, the Parties
24 were able to reach an agreement to settle the Action pursuant to Judge Pate’s proposal. After reaching
25 an agreement in principle, the parties drafted and negotiated a long-form settlement agreement, which is
26 the subject of the instant motion.

27 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**
28

1 14. In early 2020, Class Counsel began its pre-filing investigation into Plaintiff's complaints.
2 Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the
3 interview process, Plaintiff produced numerous documents related to his employment for Defendant,
4 including portions of Defendant's handbooks, compensation policies and time and payroll records. At
5 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
6 inquiry.

7 15. Shortly thereafter, Class Counsel summarized the known factual and legal issues in the
8 PAGA Notice addressed to the LWDA. Several weeks later, Class Counsel filed this class action.

9 16. After the initiation of the Action, Plaintiff engaged in significant written discovery with
10 Defendant, as described above. Additionally, to prepare for mediation, Class Counsel requested several
11 documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the
12 Settlement Class members. In response to Class Counsel's request, Defendant produced the time and
13 payroll records for the entire Settlement Class, and copies of applicable handbooks containing, *inter alia*,
14 compensation, timekeeping and, meal and rest period policies. In total, Defendant produced
15 approximately 300 pages containing thousands of unique cells of time and payroll data for Class Counsel
16 to analyze.

17 17. Class Counsel then retained the statisticians and economists at Berger Consulting Group
18 ("BCG"), to evaluate the Settlement Class Members' payroll and time data. BCG provides data analysis
19 and damage modeling consulting services specializing in wage and hour class actions. BCG's team of
20 financial and data analysts are credentialed and experienced experts in their fields and have provided
21 their expertise on thousands of cases. Stated differently, Plaintiff's Counsel the BCG is uniquely
22 qualified to analyze Defendant's time and payroll data.

23 18. BCG analyzed Defendant's time and payroll data to assist in the development of various
24 damage models. Among other things, BCG determined the approximate number of work shift, work
25 weeks, pay periods, average rate of pay, average length of shift and average number of hours worked per
26 week and pay period during the Class Period. BCG also estimated the number of missed, late or
27 truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class
28

1 Period, and also estimated the amount of off-the-clock work performed by the Settlement Class during
2 the Class Period.

3 19. In advance of mediation, Class Counsel created a damage model predicated on BCG
4 analysis. Class Counsel's model calculated Defendant's potential liability exposure while accounting
5 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
6 during the mediated settlement discussions.

7 20. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
8 determining Plaintiff's suitability as a putative class representative through interviews, background
9 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
10 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
11 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
12 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
13 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
14 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief and (9)
15 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
16 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
17 independent assessment of the reasonableness of the terms to which the parties have agreed.

18 **C. The Parties Settled at Mediation**

19 21. On June 1, 2021, the Parties conducted a full day of mediation with (Ret.) William Pate, a
20 highly regarded mediator, and former San Diego County Superior Court Judge. Judge Pate helped to
21 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
22 sides. The Parties made substantial progress with Judge Pate's assistance. Namely, the parties exchanged
23 information regarding their respective claims and defense, including their respective evaluation of the
24 damages. After nearly eight hours arm's length and adversarial negotiations, the mediation concluded
25 without a settlement. However, after months of settlement negotiations following the mediation, Judge
26 Pate issued a proposal for settlement that the Parties accepted. The complete and final terms of the
27 Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
28 constitutes a fair, adequate, and reasonable compromise of the claims at issue.

22. At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the mediation session concluded without a settlement. The matter resolved only when Judge Pate issued a mediator's proposal that the Parties accepted months after the mediation concluded. Judge Pate only arrived at his proposal after hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses.

23. Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

IV. ARGUMENT

A. The Court Should Preliminarily Approve the Settlement

24. The Total Settlement Amount of \$100,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop varied economic a damages model measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The model was informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for the Settlement Class was approximately \$311,338 for *damages* and \$561,141 for *damages and penalties* (excluding PAGA penalties), if successful at trial. This estimate does not take into account the uncertainty regarding several of Plaintiff's claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and alleged waiting time penalties resulting from meal and rest period violations. Thus, the Total Settlement Amount of \$100,000 represents approximately 32% of Defendant's liability exposure for damages, and 17.8% of Defendant's liability exposure for damages and penalties, as estimated by Class Counsel and BCG at the time of mediation. The following summarizes Defendant's estimated exposure. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace

1 for similar settlements, and in light of the risk of significant delay, uncertainty associated with litigation,
2 and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in
3 the best interests of Settlement Class. Because the Settlement's terms are fair, reasonable, and adequate,
4 the Court should preliminarily approve the Settlement.

5 (1) Estimated Damages for Meal Period Violations

6 25. Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically,
7 Plaintiff alleges that because of their rigorous work schedules and Defendant's requirement that some of
8 the Class Members remain on duty for their breaks, Plaintiff and the Settlement Class Members,
9 regularly worked through what should have been off-the-clock and duty-free meal periods without
10 compensation. Consequently, Plaintiff alleges that he is owed meal period premiums and compensation
11 for the off-the-clock work performed during what should have been his duty-free meal periods.

12 26. Defendant argued that it fully complied with California meal period laws and maintained
13 legally compliant policies and practices. Courts have found that where an employer's meal period
14 policies are compliant, individualized issues exist as to the reasons for missed, late or truncated meal
15 periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding
16 that although only 11.1% of the employees' time punches for meal periods were within the first 5 hours,
17 the claim was not certifiable because individualized issues existed as to the reasons for the late meal
18 periods).

19 27. Further, Defendant argued that many of the Settlement Class members executed valid On-
20 Duty Meal Period Waivers, and that only a small number of Class Members were subject to the on-duty
21 meal break agreements. Again, if successful, Defendant availed itself to a significant defense of
22 Plaintiff's meal period claim. Plaintiff estimated that this claim gives rise to approximately \$112,465 in
23 liability.

24 (2) Estimated Damages for Rest Period Violations

25 28. Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
26 Plaintiff alleged that as a result of their rigorous work schedule they were not able to take timely and duty-
27 free rest periods. Again, Defendant denied liability and asserted that it maintained legally compliant rest
28 period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary

1 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on
2 Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant
3 likely would have argued that only a small number of Class Members missed their rest breaks, and that
4 any omitted breaks were of Class Members voluntary volition. Certification likely would have required
5 depositions of Class Members who provided declarations, and Defendant surely would have obtained
6 opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See,*
7 *e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the
8 competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written
9 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United*
10 *Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's
11 own evidence confirms that the written policy does not generate uniform practices."). The rest break
12 claim was estimated to give rise to \$160,572 in liability.

13 (3) Defendant's Estimated Exposure for Unpaid Wages

14 29. Plaintiff alleged that during portions of the Class Period, Defendant failed to pay Plaintiff
15 and the Class Members for all hours worked, including time worked for more than 8 hours in a single
16 work shift. More specifically, Plaintiff alleged that because Plaintiff and Class Members had to work
17 during what should have been their off-duty meal periods, they were also underpaid for wages, including
18 overtime wages. Defendant denied Plaintiff's allegations and argued that its meal break policies and
19 practices were compliant with California law, and did not result in any work off-the-clock. Defendant
20 kept all time worked, and required employees to certify the accuracy of same. Plaintiff's consultant
21 estimated Defendant's exposure for the unpaid wages claim at approximately \$38,301.

22 (4) Exposure for Wage Statement Violations and Waiting Time Penalties

23 30. Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in
24 derivative violations of Labor Code sections 203 and 226(a). Plaintiff also alleged that Defendant failed
25 to include the employer's address on wage statements issued to Class Members in violation of section
26 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential
27 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove
28 the "willful" prong needed to obtain waiting time penalties under Cal. Lab. Code § 203. Additionally,

1 Defendant could argue that Plaintiff could not show that Class Members suffered an “injury” because of
2 wage statement violations, as required by Cal. Lab. Code § 226. Defendant could also argue that that
3 meal and rest period violations do not entitled employees like Plaintiff and the Settlement Class Members
4 to pursue the derivative waiting time and itemized wage statement penalties. Although the Settlement
5 Class arguably could have seen a payout of nearly \$1.1 million for these penalties if Plaintiff prevailed
6 on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the
7 underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class
8 deserved the penalties. The wage statement and waiting time claims were estimated to give rise to
9 \$249,803 in liability.

10 (5) Defendant’s PAGA Exposure

11 31. Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties
12 arising from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendant’s
13 PAGA exposure at approximately \$586,800.

14 32. Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
15 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
16 threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the
17 employment practices complied with all applicable Labor Laws. In addition to those arguments
18 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
19 (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and manageability as to the
20 rest period claims. In all, Plaintiff’s PAGA liability exposure is hotly contested.

21 **B. Risks of Continued Litigation**

22 33. Although Plaintiff and Class Counsel are confident about the strength of the claims,
23 collectively they recognize that Defendants have factual and legal defenses that, if successful, would
24 potentially defeat or substantially impair the value of Plaintiff’s lawsuit. These risks include not being
25 able to certify the action, the fast-changing landscape of wage and hour law, decertification, and a
26 reversal after an appeal. Consequently, the uncertainty of obtaining certification through a contested
27 motion is a significant risk factor favoring settlement.
28

34. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment.

35. In this matter, Class Counsel negotiated a Total Settlement Amount of \$300,000 that is roughly between 17.8% and 32% Defendant's maximum liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

C. Proposed Notice Informs the Class About the Case and Settlement

36. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement Class of their rights and remedies in this action. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to entire Settlement Class. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §III(L). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost effective administration of the Settlement.

37. As detailed in the Agreement, the method of disseminating the proposed Class Notice and contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

D. The Court Should Preliminarily Approve the Enhancement Award

38. Approximately 104 members of the Settlement Class will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$7,500¹ for Plaintiff. The service

¹ The amount of the requested enhancement payment-\$7,500-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. L.A. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*

award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of his employment.

39. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award.

E. The Court Should Preliminary Approve the Negotiated Class Counsel Award

40. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$12,500. Agreement at §III(M)(10).

Codwell Banker Residential Brokerage Co., No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the
2 proposed Class Counsel award is fair and reasonable.

3 41. Plaintiff will file a formal motion for the negotiated Class Counsel Award once
4 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
5 is sufficient for preliminary approval of the negotiated attorneys' fees.

6 **F. The Court Should Provisionally Certify the Settlement Class**

7 42. For the exclusive purpose of Settlement, Plaintiff contends, and Defendant does not
8 dispute, that provisional certification of the Settlement Class is appropriate. It is my opinion that
9 provisional certification is appropriate here, and that the Settlement is fair, reasonable, and adequate, and
10 in the best interests of the Class.

11 43. Generally, the proposed Settlement Class consists of all of Defendant's current and former
12 California employees during the Class Period. Defendant's records show that the Settlement Class
13 Members consists of approximately 104 individuals, making joinder of all Settlement Class Members
14 impracticable. Further, because all Settlement Class Members are Defendant's current and former
15 employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll
16 records.

17 44. The California statutes relating to each of Plaintiff's claims apply with equal force and
18 effect to the entire Settlement Class. Factually, Defendant's policies and practices applied to the putative
19 Class, . The wage and hour issues are both numerous and substantial, and a class action is the most
20 advantageous method of dealing with the claims of the Settlement Class.

21 45. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they
22 arise from the same factual basis and are based on the same legal theories applicable to the other Class
23 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
24 Class. Plaintiff alleges that they were injured by the same company-wide practices to which the proposed
25 Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to
26 advocate for the interests of the Settlement Class by initiating this litigation, undertaking class discovery,
27 and evaluating the proposed settlement to assure that it is fair.

1 46. A class action is superior to a multitude of individual lawsuits. Given the size and amount
2 of each individual Settlement Class Member's claim, Class Settlement Members likely have little
3 incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal
4 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment
5 is superior to individual, case-by-case adjudication.

6 **F. Class Counsel's Experience**

7 47. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by
8 competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC
9 ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers
10 throughout California in wage and hour class actions, PAGA Actions and complex multi-party product
11 liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner),
12 Tesla Stone (Paralegal), Leilani Edmunds (Legal Secretary), Amanda De Blouw (Legal Assistant).

13 48. I am qualified to represent the Plaintiff, the State of California and the Aggrieved
14 Employees. I have extensive experience with wage and hour class and representative actions litigation
15 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
16 litigation experience and complex construction product liability experience. I can, will and have
17 adequately represented the interests of the Plaintiff, the State of California and the Aggrieved Employees
18 throughout this action.

19 49. I have represented consumers and employees in California class actions, and complex
20 multi-party product liability actions exclusively for more than 13 years. I have been in practice as a
21 plaintiffs' civil litigation attorney since April 2007.

22 50. I have significant class counsel and collective action counsel experience. I served as class
23 and/or collective (PAGA) counsel in the following matters:

- 24 a. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
25 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
26 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as
27 class counsel for the settlement class and as representative PAGA counsel the State of
28 California and the Aggrieved Employees.)

- b. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- c. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- d. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- e. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- f. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- g. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- h. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

- i. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)
- j. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- k. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- l. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- m. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- n. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- o. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,

APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

p. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

q. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

r. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

s. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

t. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

u. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

v. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

w. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

x. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

EXHIBIT 1

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SHASTA

ERIK FOSS, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

PLAINTIFF,

vs.

ANDERSON HOSPITALITY, INC., a
California Corporation; and DOES 1 through
50, Inclusive;
DEFENDANTS.

Case No. 195317

[Action Filed 07/02/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PAGA CLAIMS,
AND RELEASE OF CLAIMS**

Judge: Honorable Stephen H. Baker
Dept.: 3

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between plaintiff ERIK FOSS (hereinafter “Plaintiff”), individually and on behalf of the putative class and the State of California as a private attorney general, and Defendant ANDERSON HOSPITALITY, INC., a California Corporation (hereinafter “Defendant”):

I. DEFINITIONS

- A. “Action” shall mean the putative class action and representative lawsuit under the California Labor Code's Private Attorneys' General Act of 2004 ("PAGA") designated *Foss v. Anderson Hospitality, Inc.*, Shasta County Superior Court, Case No. 195317, filed July 2, 2020 (hereinafter “the Action”)
- B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys’ fees not to exceed one-third of the Total Settlement Amount currently estimated to be \$33,333.33, plus costs and expenses in the amount of \$12,500. Class Counsel’s award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).

- 1 F. "Class Data" means information regarding Class Members that Defendant will in
2 good faith compile from its records and provide to the Settlement Administrator. It
3 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
4 Member's full name; last known address; Social Security Number; start dates and end
5 dates of employment.
6
- 7 G. "Class Members" or the "Class" means all non-exempt employees who are or
8 previously were employed by Defendant in California during the Class Period.
9
- 10 H. "Class Period" means the period between July 2, 2016 to October 31, 2021.
11
- 12 I. "Class Representative Service Award" means the amount that the Court authorizes to
13 be paid to the Class Representative, in addition to his Individual Settlement Payment
14 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
15 in assisting with the prosecution of the Action and in exchange for executing a
16 General Release of Defendant.
17
- 18 J. "Class Representative" shall mean plaintiff ERIK FOSS.
19
- 20 K. "Court" means the Superior Court for the State of California, County of Shasta
21 currently presiding over the Action.
22
- 23 L. "Defendant" shall mean Anderson Hospitality Inc., a California Corporation.
24
- 25 M. "Effective Date" means the earliest date, following entry by the Court of an order
26 and judgment finally approving this Settlement, upon which one of the following have
27 occurred: (i) if no objection is filed to the settlement and no objector appears at the
28 hearing on final approval, the date of the Court's entry of the order granting final

1 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
2 hearing on final approval, then the earlier of the following: (a) the expiration of all
3 potential appeal periods without a filing of a notice of appeal of the final approval
4 order or judgment; (b) final affirmance of the final approval order and judgment by
5 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
6 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
7 the final approval order and judgment is no longer subject to further judicial review.
8 The Effective Date cannot occur, and Defendant shall not be obligated to fund this
9 Settlement, until and unless final approval occurs with no objections to the settlement
10 or, if there are any objections, then after there is no possibility of an appeal or further
11 appeal that could potentially prevent this Settlement Agreement from becoming final
12 and binding.
13
14

15 N. "Funding Date #1" shall mean ten (10) calendar days after the Effective Date and is
16 the date Defendant transfers \$55,000 of the Total Settlement Amount into the QSF in
17 accord with the terms of this Agreement.
18

19 O. "Funding Date #2" shall mean six (6) months after the Effective Date and is the date
20 Defendant transfers the remaining \$45,000 of the Total Settlement Amount into the
21 QSF in accord with the terms of this Agreement.
22

23 P. "Individual Settlement Payment" means the amount payable from the Net Settlement
24 Amount to each Settlement Class Member and excludes any amounts distributed to
25 Aggrieved Employees pursuant to PAGA.
26
27
28

- 1 Q. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
2 Counsel Award, Class Representative Service Award, PAGA Settlement, and
3 Settlement Administration Costs.
4
- 5 R. "Notice Packet" means the Class Notice to be provided to the Class Members by the
6 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
7 than formatting changes to facilitate printing by the Settlement Administrator).
8
- 9 S. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
10 Labor Code § 2698 *et seq.*
- 11 T. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
12 for each Aggrieved Employee divided by the sum total of the pay periods for all
13 Aggrieved Employees during the PAGA Period.
14
- 15 U. "PAGA Period" means the period between April 24, 2019 until October 31, 2021 (the
16 "PAGA Period").
17
- 18 V. "PAGA Settlement" shall mean Five Thousand Dollars (\$5,000) to be allocated from
19 the Total Settlement Amount.
20
- 21 W. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
22 Plaintiff or Defendant, individually.
23
- 24 X. "Class Payment Ratio" means the respective Workweeks for each Class Member
25 divided by the sum total Workweeks for all Class Members.
26
- 27 Y. "Plaintiff" shall mean ERIK FOSS.
28

1 Z. “QSF” means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund the Total Settlement Amount.

3
4 AA. “Released Class Claims” means a full and final release and discharge by each Class
5 Member in favor of the Released Parties of and from any and all potential or actual
6 claims, rights, debts, wages, liabilities, demands, obligations, penalties, guarantees,
7 costs, expenses, attorneys' fees, costs, interest, restitution, equitable relief, damages,
8 liquidated damages, actions, claims or causes of action arising out of, or based upon,
9 the facts alleged or which reasonably could have been alleged in the operative
10 complaint based on the facts alleged, under any state, federal, or local law, rule, or
11 regulation, including, without limitation, the California Labor Code, and federal Fair
12 Labor Standards Act of 1938, as amended ("FLSA"). This release expressly includes
13 any and all claims alleged in the operative complaint, including (a) alleged violations
14 related to unpaid overtime, (b) failure to pay the proper regular rate of pay for
15 overtime worked, (c) failure to pay for all time worked, including alleged off-the-
16 clock work, (d) unpaid minimum wage violations, (e) timecard alteration, (f) failure
17 to keep accurate time records, (g) alleged failure to provide proper meal breaks, (h)
18 alleged failure to provide proper rest breaks, (i) alleged failure to pay meal or rest
19 break premiums at the proper rate of pay, and (j) alleged failure to furnish full,
20 accurate wage statements. The "Released Class Claims" also expressly include those
21 claims, theories, and causes of action asserted under Labor Code sections 201, 202,
22 203, 206.5, 226, 226.7, 510 *et seq.*, 512, 515, 558, 1194, 1197, 1197.1, 1198, and all
23 such claims under the applicable Industrial Wage Order(s), as well as all
24 corresponding provisions of the FLSA. The "Released Class Claims" expressly
25
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1 exclude all other claims, including claims for vested benefits, wrongful termination,
2 unemployment insurance, disability, social security, workers' compensation, and any
3 claims outside of the Class Period. The Released Class Claims also exclude any and
4 all claims for violations of PAGA and for PAGA penalties, which are separately being
5 released hereinbelow.
6

7 BB. "Released PAGA Claims" means a full and final release and discharge by the State
8 of California, the California Labor Workforce Development Agency ("LWDA"), and
9 each Aggrieved Employee in favor of the Released Parties as to any claims, rights, or
10 causes of action for civil penalties, attorneys' fees, interest, costs, or any relief under
11 PAGA, which is predicated upon the alleged Labor Code violations supporting the
12 PAGA claims alleged in the operative complaint and those alleged in Plaintiff's
13 PAGA notice to the LWDA, including civil penalties arising from (a) alleged
14 violations related to unpaid overtime, (b) failure to pay the proper regular rate of pay
15 for overtime worked, (c) failure to pay for all time worked, including alleged off-the-
16 clock work, (d) unpaid minimum wage violations, (e) timecard alteration, (f) failure
17 to keep accurate time records, (g) alleged failure to provide proper meal breaks, (h)
18 alleged failure to provide proper rest breaks, (i) alleged failure to pay meal or rest
19 break premiums at the proper rate of pay, and (j) alleged failure to furnish full,
20 accurate wage statements. The "Released PAGA Claims" expressly include claims
21 for civil penalties under PAGA arising from alleged violations of Labor Code sections
22 201, 201.3, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510 *et seq.*,
23 512, 515, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199 and all such
24 claims under the applicable Industrial Wage Order(s). The "Released PAGA Claims"
25
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28

1 expressly exclude all other claims, including claims for vested benefits, unpaid wages,
2 wrongful termination, unemployment insurance, disability, social security, workers'
3 compensation, and any PAGA claims or claims for civil penalties outside the PAGA
4 Period.
5

6 CC. "Released Parties" shall mean Defendant Anderson Hospitality, Inc., along with any
7 past, present, and future affiliated company, any predecessors, related or affiliated
8 companies, subsidiaries, parents, alleged joint employer(s), divisions, officers,
9 directors, agents, employees, attorneys, insurers, successors, assigns, stockholders,
10 principals, owners, trustees, partners, representatives, and members.
11

12 DD. "Response Deadline" means the date forty-five (45) days after the Settlement
13 Administrator mails Notice Packets to Class Members and the last date on which
14 Class Members may submit requests for exclusion or objections to the Settlement.
15

16 EE. "Settlement" means the disposition of the Action pursuant to this Agreement.
17

18 FF. "Settlement Administrator" means ILYM Group, Inc.. The Settlement Administrator
19 establishes, designates and maintains, as a QSF under Internal Revenue Code section
20 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total
21 Settlement Amount is deposited for the purpose of resolving the claims of Settlement
22 Class Members and Aggrieved Employees. The Settlement Administrator shall
23 maintain the funds until distribution in an account(s) segregated from the assets of
24 Defendant and any person related to Defendant. Any accrued interest shall be paid
25 and distributed to the Settlement Class Members as part of their respective Individual
26 Settlement Payment.
27
28

1 GG. "Settlement Class Members" or "Settlement Class" means all Class Members who
2 have not submitted a timely and valid request for exclusion as provided in this
3 Agreement.

4
5 HH. "Total Settlement Amount" means One Hundred Thousand Dollars (\$100,000.00)
6 that Defendant must pay into the QSF in connection with this Settlement in
7 consideration of a judgment of dismissal of the Action in its entirety with prejudice,
8 as well as the various releases. The Total Settlement Amount shall be the maximum
9 amount Defendant shall be obligated to pay under the terms of this Settlement
10 Agreement, except for the employer's share of payroll tax, if any, triggered by any
11 payment under this Settlement.
12

13
14 II. "Workweeks", for purposes of calculating the distribution of the Net Settlement
15 Amount, means the number of weeks of employment during the Class Period that
16 each Class Member was employed by Defendant in California, excluding weeks
17 during which the Class Member did not perform any work for Defendant. For purpose
18 of determining the Individual Settlement Payments and the Settlement Allocation,
19 each Class Member who is a former employee no longer working for Defendant will
20 be assigned four (4) additional Workweeks.
21

22 JJ. "PAGA Pay Periods", for purposes of calculating the distribution of the Aggrieved
23 Employee Payment, as defined herein, means the number of pay periods of
24 employment during the PAGA Period that each Aggrieved Employee worked in
25 California.
26
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28

1 **II. RECITALS**

2 A. On or about April 24, 2020, Plaintiff filed a Notice of Violations with the Labor and
3 Workforce Development Agency (LWDA) and served the same on Defendant.

4
5 B. On July 2, 2020, Plaintiff filed the Class Action lawsuit for:

6
7 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*,
8 predicated on various alleged violations of the California Labor Code and the
9 applicable Industrial Wage Order(s);

10
11 2. Failure to pay minimum wages in violation of California Labor Code sections
12 1194, 1197 and 1197.1;

13
14 3. Failure to pay overtime wages in violation of California Labor Code sections
15 510 *et seq*;

16
17 4. Failure to provide required meal periods in violation of California Labor Code
18 sections 226.7 and 512 and the applicable IWC wage order;

19
20 5. Failure to provide required rest periods in violation of California Labor Code
21 sections 226.7 and 512 and the applicable IWC wage order;

22
23 6. Failure to provide accurate itemized wage statements in violation of California
24 Labor Code section 226;

25
26 7. Failure to provide wages when due in violation of California Labor Code
27 sections 201, 202 and 203;

1 8. Violation of the Private Attorneys General Act [Labor Code section 2698],
2 which cause of action was predicated upon various alleged violations of the California
3 Labor Code and the applicable Industrial Wage Order(s).

4
5 C. The Class Representative believes he has meritorious claims based on alleged
6 violations of the California Labor Code, and the Industrial Wage Commission Wage
7 Orders, and that class certification is appropriate because the prerequisites for class
8 certification can be satisfied in the Action, and this Action is manageable as a PAGA
9 representative action.

10
11 D. Defendant denies same, and denies any liability or wrongdoing of any kind
12 whatsoever, disputes any wages, damages and penalties claimed by the Class
13 Representative and Class are owed, and further contends that, for any purpose other
14 than settlement, the Action is not appropriate for class or representative action
15 treatment. Defendant contends, among other things, that at all times they complied
16 with the California Labor Code and the Industrial Wage Commission Orders, and all
17 other applicable laws.

18
19 E. The Class Representative is represented by Class Counsel. Class Counsel conducted
20 an investigation into the facts relevant to the Action, including conducting an
21 independent investigation as to the allegations, reviewing documents and information
22 exchanged through informal discovery, and reviewing documents and information
23 provided by Defendant pursuant to informal requests for information to prepare for
24 mediation. Defendant produced for the purpose of settlement negotiations certain
25 employment data concerning the Aggrieved Employees and Settlement Class, which
26
27
28

1 Class Counsel reviewed and analyzed. Based on their own independent investigation
2 and evaluation, Class Counsel are of the opinion that the Settlement with Defendant
3 is fair, reasonable and adequate, and is in the best interest of the Aggrieved Employees
4 and the Settlement Class in light of all known facts and circumstances, including the
5 risks of significant delay, defenses asserted by Defendant, uncertainties regarding
6 class certification, and numerous potential appellate issues. Although it denies any
7 liability, Defendant is agreeing to this Settlement solely to avoid the inconveniences
8 and cost of further litigation. The Parties and their counsel have agreed to settle the
9 claims on the terms set forth in this Agreement.
10

11
12 F. On June 1, 2021, the Parties participated in mediation presided over by Hon. William
13 C. Pate (Ret.), a respected jurist and an experienced mediator of wage and hour class
14 and representative actions. The mediation concluded without a settlement. However,
15 following the mediation, each side, represented by its respective counsel, were able
16 to reach an agreement to settle this Action for the Total Settlement Amount of
17 \$100,000 following further discovery and discussions. The Parties later entered into
18 this Joint Stipulation of Settlement of Class and PAGA Action and Release of Claims.
19

20 G. This Agreement replaces and supersedes any other agreements, understandings, or
21 representations between the Parties. This Agreement represents a compromise and
22 settlement of highly disputed claims. Nothing in this Agreement is intended or will
23 be construed as an admission by Defendant that the claims in the Action have merit
24 or that Defendant bears any liability to Plaintiff or the Class or Aggrieved Employees,
25 or as an admission by Plaintiff that Defendant's defenses in the Action has merit.
26
27
28

1 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
2 Settlement was arrived at through arm's-length negotiations, taking into account all
3 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
4 attendant to continuing the Action through class certification, trial and any appeal.
5 Accordingly, the Parties desire to fully, finally, and forever settle, compromise and
6 discharge all disputes and claims arising from or relating to the Action.
7

8 I. The Parties agree to conditional certification of the Class strictly for purposes of
9 effectuating this Settlement only. If for any reason the settlement is not preliminarily
10 or finally approved by the Court or does not otherwise become effective, Defendant
11 will and hereby reserves the right to contest certification of any class for any reason
12 and reserves all available defenses to the claims in the Action.
13

14
15 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

16 **III. TERMS OF AGREEMENT**

17 A. Settlement Consideration and Settlement Payments by Defendant.

- 18
19 1. Settlement Consideration. In full and complete settlement of the Action, and
20 in exchange for the releases set forth herein and below, Defendant and the
21 Released Parties will pay the Total Settlement Amount of One Hundred
22 Thousand Dollars (\$100,000.00). The Parties agree that this is a non-
23 reversionary Settlement and that no portion of the Total Settlement Amount
24 shall revert to Defendant. Other than the Defendant's share of employer
25 payroll taxes, Defendant shall not be required to pay more than the Total
26 Settlement Amount, except as provided for hereinbelow.
27
28

1 2. Class Size. At the time of mediation (June 1, 2021), Defendant estimated that
2 the Settlement Class was approximately 104 individuals who collectively
3 worked approximately 3,800 Workweeks during the Class Period (“Projected
4 Workweeks”). In regard hereto, Defendant will provide a declaration under
5 penalty of perjury confirming the number of Class Members and Workweeks
6 they worked during the Class Period prior to the filing of the motion for
7 preliminary approval. If the workweek numbers is greater than 105% of the
8 workweek estimate provided herein, the end date of the Release Period and
9 Class Period will be adjusted so that the number of workweeks in the Release
10 Period and Class Period does not exceed 105% of the estimate.

11
12
13 3. Settlement Payment. Defendant and the Released Parties, and each of them,
14 are jointly and severally liable for payment of the Total Settlement Amount.
15 Defendant shall pay, via wire transfer, the Total Settlement Amount in two
16 installments as follows: \$55,000 on Funding Date #1 and \$45,000 due on
17 Funding Date #2.

18
19 4. Defendant’s Share of Payroll Taxes. Defendant’s share of employer side
20 payroll taxes is in addition to the Total Settlement Amount and shall be paid
21 together with the Total Settlement Amount.

22
23 B. Release by Settlement Class Members. As of the Funding Date #2, in exchange for
24 the consideration set forth in this Agreement, Plaintiff and the Settlement Class
25 Members release the Released Parties from the Released Class Claims for the Class
26 Period. Participating Class Members agree not to sue or otherwise make any claim
27

1 against any of the Released Parties that seeks recovery for any of the Released Class
2 Claims. It is the intent of the Parties that the final approval order and judgment entered
3 by the Court shall have full claim and issue preclusive effect, and be final and binding
4 on Participating Class Members, regarding the Released Class Claims.

5
6 C. Release by the Aggrieved Employees. As of the Funding Date #2, in exchange for the
7 consideration set forth in this Agreement, and as more specifically set forth above in
8 Sections I(AA), I(BB), and III(B), the Plaintiff, the LWDA and the State of California
9 release the Released Parties from the PAGA Released Claims for the PAGA Period.
10 As a result of this release, Aggrieved Employees shall be precluded from making any
11 claim against any of the Released Parties that seeks recovery for any of the Released
12 PAGA Claims. It is the intent of the Parties that the final approval order and judgment
13 entered by the Court shall have full claim and issue preclusive effect, and be final and
14 binding on the State of California, the LWDA and the Aggrieved Employees,
15 regarding the Released PAGA Claims.

16
17 D. General Release by Plaintiff. As of the Funding Date #2, for the consideration set
18 forth in this Agreement, Plaintiff waives, releases, acquits and fully, finally, and
19 forever discharges the Released Parties of and from any and all claims, whether now
20 known or unknown, which exist or may exist on his behalf as of the date of this
21 Agreement, including but not limited to any and all claims, debts, wages, liabilities,
22 demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, costs,
23 interest, damages, actions, claims or causes of action arising out of the Parties'
24 relationship or Plaintiff's employment with Defendant, including, without limitation,
25 any tort claims, contract claims, wage claims, wrongful termination claims, disability
26 claims, benefit claims, public policy claims, retaliation claims, statutory claims,
27
28

1 personal injury claims, emotional distress claims, invasion of privacy claims,
2 defamation claims, fraud claims, quantum meruit claims, and any and all claims
3 arising under any federal, state or other governmental statute, law, regulation or
4 ordinance, including, but not limited to claims for violation of the Fair Labor
5 Standards Act, the California Labor Code, the Wage Orders of California's Industrial
6 Welfare Commission, other state wage and hour laws, the Americans with
7 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
8 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
9 California Fair Employment and Housing Act, the California Family Rights Act, the
10 Family Medical Leave Act, California's Whistleblower Protection Act, California
11 Business & Professions Code Section 17200 et seq., and any and all claims arising
12 under any federal, state or other governmental statute, law, regulation or ordinance.
13 Plaintiff also waives and relinquishes any and all claims, rights or benefits that he
14 may have under California Civil Code § 1542, which provides as follows:
15

16
17 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
18 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
19 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
20 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
21 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
22 ***DEBTOR OR RELEASED PARTY.***
23

24
25 Thus, notwithstanding the provisions of section 1542, and to implement a full and
26 complete release and discharge of the Released Parties, Plaintiff expressly
27 acknowledges this Settlement Agreement is intended to include in its effect, without
28

1 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
2 the time of signing this Settlement Agreement, and that this Settlement Agreement
3 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
4 has read this Settlement Agreement, including this waiver of California Civil Code
5 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
6 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
7 about the waiver of section 1542, and that Plaintiff understands this Settlement
8 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
9 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
10 discover facts different from or in addition to those Plaintiff now knows or believes to
11 be true regarding the matters released or described in this Settlement Agreement, and
12 even so Plaintiff agrees that the releases and agreements contained in this Settlement
13 Agreement shall remain effective in all respects notwithstanding any later discovery of
14 any different or additional facts. Plaintiff expressly assumes any and all risk of any
15 mistake in connection with the true facts involved in the matters, disputes, or
16 controversies released or described in this Settlement Agreement or with regard to any
17 facts now unknown to Plaintiff relating thereto.
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21 E. Conditions Precedent: This Settlement will become final and effective only upon the
22 occurrence of all of the following events:
23

- 24 1. The Court enters an order granting preliminary approval of the Settlement;
- 25 2. The Court enters an order granting final approval of the Settlement and a Final
26 Judgment consistent with this Agreement;
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1 3. If an objector appears at the final approval hearing, the time for appeal of the
2 Final Judgment and Order Granting Final Approval of Class Action
3 Settlement shall have expired; or, if an appeal is timely filed, there is a final
4 resolution of any appeal from the Judgment and Order Granting Final
5 Approval of Class Action Settlement; and

6
7 4. Defendant fully funds the Total Settlement Amount.

8
9 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
10 not preliminarily or finally approved by the Court, fails to become effective, or is
11 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
12 Defendant from obtaining a complete resolution of the Released Claims, or if
13 Defendant fails to fully fund the Total Settlement Amount:

14
15 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
16 and shall not be admissible in any judicial, administrative or arbitral
17 proceeding for any purpose or with respect to any issue, substantive or
18 procedural;

19
20 2. The conditional class certification (obtained for any purpose) shall be void *ab*
21 *initio* and of no force or effect, and shall not be admissible in any judicial,
22 administrative or arbitral proceeding for any purpose or with respect to any
23 issue, substantive or procedural; and
24

1 3. None of the Parties to this Settlement will be deemed to have waived any
2 claims, objections, defenses or arguments in the Actions, including with
3 respect to the issue of class certification.

4
5 4. If Defendant fails to fully fund the Total Settlement Amount, Defendant shall
6 bear the sole responsibility for any cost to issue or reissue any curative notice
7 to the Settlement Class Members and all Settlement Administration Costs
8 incurred to the date of nullification.

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10 G. Certification of the Settlement Class. The Parties stipulate to conditional class
11 certification of the Class for the Class Period for purposes of settlement only. In the
12 event that this Settlement is not approved by the Court, fails to become effective, or is
13 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
14 Defendant from obtaining a complete resolution of the Released Claims, the
15 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
16 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
17 proceeding for any purpose or with respect to any issue, substantive or procedural.

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20 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
21 effect of the payments called for, and Class Members and/or Aggrieved Employees are
22 not relying on any statement or representation by the Parties in this regard. Class
23 Members and/or Aggrieved Employees understand and agree that they will be
24 responsible for the payment of any taxes and penalties assessed on the Individual
25 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
26 Settlement described and shall be solely responsible for any penalties or other
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obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Plaintiff will provide Defendant with

1 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
2 Defendant an opportunity to propose changes or additions to the Motion.

3
4 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
5 establishing and administering the QSF; calculating, processing and mailing payments
6 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
7 mailing the Notice Packets to the Class Members as directed by the Court; receiving
8 and reporting the objections and requests for exclusion; calculating, deducting and
9 remitting all legally required taxes from Individual Settlement Payments and
10 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
11 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
12 Settlement; processing and mailing tax payments to the appropriate state and federal
13 taxing authorities; providing declaration(s) as necessary in support of preliminary
14 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
15 or the Court orders the Settlement Administrator to perform. The Settlement
16 Administrator shall keep the Parties timely apprised of the performance of all
17 Settlement Administrator responsibilities by among other things, sending a weekly
18 status report to the Parties' counsel stating the date of the mailing, the of number of
19 Elections Not to Participate in Settlement it receives (including the numbers of valid
20 and deficient), and number of objections received.

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24 L. Notice Procedure.

25 1. Class Data. No later than ten (10) business days after the Court enters an order
26 preliminarily approving the Settlement, Defendant shall provide the
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1 Settlement Administrator with the Class Data for purposes of preparing and
2 mailing Notice Packets to the Class Members.

3
4 2. Notice Packets.

- 5
6 a) The Notice Packet shall contain the Notice of Class Action Settlement
7 in a form substantially similar to the form attached as Exhibit A. The
8 Notice of Class Action Settlement shall inform Class Members and
9 Aggrieved Employees that they need not do anything in order to
10 receive an Individual Settlement Payment and/or Aggrieved
11 Employees' individual shares of the PAGA Settlement and to keep the
12 Settlement Administrator apprised of their current mailing address, to
13 which the Individual Settlement Payments and/or Aggrieved
14 Employees' individual shares of the PAGA Settlement will be mailed
15 following the Funding Date. The Notice of Class Action Settlement
16 shall set forth the release to be given by all members of the Class who
17 do not request to be excluded from the Settlement Class and/or
18 Aggrieved Employees' in exchange for an Individual Settlement
19 Payment and/or Aggrieved Employees' individual shares of the PAGA
20 Settlement, the number of Workweeks and Pay Periods worked by
21 each Class Member during the Class Period and PAGA Period, if any,
22 and the estimated amount of their Individual Settlement Payment if
23 they do not request to be excluded from the Settlement, and each
24 Aggrieved Employee's share of the PAGA Settlement, if any. The
25 Settlement Administrator shall use the Class Data to determine Class
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Members' Workweeks and PAGA Workweeks. The Notice will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will receive their share of the PAGA Settlement regardless of whether they request to be excluded from the Settlement, and that they have no ability to request exclusion from the PAGA Settlement.

b) The Notice Packet's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than fourteen (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail . The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. If no forwarding address is
4 provided, the Settlement Administrator shall promptly attempt to determine a
5 correct address by lawful use of skip-tracing, or other search using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform one re-mailing, if another mailing address is identified by
8 the Settlement Administrator. In addition, if any Notice Packets, which are
9 addressed to Class Members who are currently employed by Defendant, are
10 returned to the Settlement Administrator as non-delivered and no forwarding
11 address is provided, the Settlement Administrator shall notify Defendant.
12 Defendant will request that the currently employed Class Member provide a
13 corrected address, and transmit to the Administrator any corrected address
14 provided by the Class Member. Class Members who received a re-mailed
15 Notice Packet shall have their Response Deadline extended fifteen (15) days
16 from the original Response Deadline.

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20 5. Disputes Regarding Individual Settlement Payments. Class Members will
21 have the opportunity during the notice period, should they disagree with
22 Defendant's records regarding the start and end dates of employment to
23 provide documentation and/or an explanation to show contrary dates. If there
24 is a dispute, the Settlement Administrator will consult with the Parties to
25 determine whether an adjustment is warranted. The Settlement Administrator
26 shall determine the eligibility for, and the amounts of, any Individual
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1 Settlement Payments under the terms of this Agreement. The Settlement
2 Administrator's determination of the eligibility for and amount of any
3 Individual Settlement Payment shall be binding upon the Class Member and
4 the Parties.
5

6 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
7 by the Settlement Administrator concerning the administration of the
8 Settlement will be resolved by the Court under the laws of the State of
9 California. Before any such involvement of the Court, counsel for the Parties
10 will confer in good faith to resolve the disputes without the necessity of
11 involving the Court.
12

13 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
14 Packet shall state that Class Members who wish to exclude themselves from
15 the Settlement must submit a written request for exclusion by the Response
16 Deadline. The written request for exclusion must state that the Class Member
17 wishes to exclude himself or herself from the Settlement and (1) must contain
18 the name, address, and the last four digits of the Social Security number of the
19 person requesting exclusion; (2) must be signed by the Class Member; (3)
20 must be postmarked or fax stamped by the Response Deadline and returned to
21 the Settlement Administrator at the specified address or fax telephone number;
22 and (4) contain a typewritten or handwritten notice stating in substance: "I
23 wish to opt out of the settlement of the class action lawsuit entitled *Foss v.*
24 *Anderson Hospitality, Inc.*, currently pending in the Superior Court for the
25 County of Shasta, Case No. 195317. I understand that by requesting to be
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1 excluded from the settlement, I will receive no money from the Settlement
2 described in this Notice.” The request for exclusion shall not be valid if it is
3 not timely submitted, if it is not signed by the Class Member, or if it does not
4 contain the name and address and last four digits of the Social Security number
5 of the Class Member. The date of the postmark on the mailing envelope or
6 fax stamp on the request for exclusion shall be the exclusive means used to
7 determine whether the request for exclusion was timely submitted. Any Class
8 Member who requests to be excluded from the Settlement Class will not be
9 entitled to an Individual Settlement Payment and will not be otherwise bound
10 by the terms of the Settlement or have any right to object, appeal or comment
11 thereon. However, any Class Member that submits a timely request for
12 exclusion that is also a member of the Aggrieved Employees will still receive
13 his/her pro rata share of the PAGA Settlement, as specified below, and in
14 consideration, will nevertheless be bound by the Released PAGA Claims of
15 the Aggrieved Employees as set forth herein. Settlement Class Members who
16 fail to submit a valid and timely written request for exclusion on or before the
17 Response Deadline shall be bound by all terms of the Settlement and any final
18 judgment entered in this Action if the Settlement is approved by the Court.
19 No later than fourteen (14) calendar days after the Response Deadline, the
20 Settlement Administrator shall provide counsel for the Parties with a final list
21 of the Class Members who have timely submitted written requests for
22 exclusion. At no time shall any of the Parties or their counsel seek to solicit
23 or otherwise encourage members of the Class to submit requests for exclusion
24 from the Settlement.
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1 8. Option to Terminate. If, before the Final Approval Hearing, more than seven
2 and one-half percent (7.5%) of Class Members have submitted timely and
3 valid Requests for Exclusion, Defendant shall have, in its sole discretion, the
4 option to terminate this Settlement.

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6 9. Objections. The Notice of Class Action Settlement contained in the Notice
7 Packet shall state that Class Members who wish to object to the Settlement
8 may submit to the Settlement Administrator a written statement of objection
9 ("Notice of Objection") by the Response Deadline. The postmark date of
10 mailing shall be deemed the exclusive means for determining that a Notice of
11 Objection was served timely. The Notice of Objection must be signed by the
12 Settlement Class Member and state: (1) the case name and number; (2) the
13 name of the Settlement Class Member; (3) the address of the Settlement Class
14 Member; (4) the last four digits of the Settlement Class Member's Social
15 Security number; (4) the basis for the objection; and (5) if the Settlement Class
16 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
17 Class Members who fail to make objections in writing in the manner specified
18 above may still make their objections orally at the Final Approval/Settlement
19 Fairness Hearing with the Court's permission. Settlement Class Members will
20 have a right to appear at the Final Approval/Settlement Fairness Hearing to
21 have their objections heard by the Court. At no time shall any of the Parties
22 or their counsel seek to solicit or otherwise encourage Class Members to file
23 or serve written objections to the Settlement or appeal from the Order and
24 Final Judgment. Class Members who submit a written request for exclusion
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1 may not object to the Settlement. Class Members may not object to the PAGA
2 Settlement.

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4 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
5 the Total Settlement Amount on or before the Funding Dates as provided for herein,
6 plus any employer's share of payroll taxes as mandated by law within the time
7 specified herein.

8
9 1. Individual Settlement Payments. Individual Settlement Payments shall be
10 paid from the Net Settlement Amount and shall be paid pursuant to the
11 formula set forth herein. Using the Class Data, the Settlement Administrator
12 shall add up the total number of Workweeks for all Class Members. The
13 respective Workweeks for each Class Member will be divided by the total
14 Workweeks for all Class Members, resulting in the Payment Ratio for each
15 Class Member. Each Class Member's Payment Ratio will then be multiplied
16 by the Net Settlement Amount to calculate each Class Member's estimated
17 Individual Settlement Payments. Each Individual Settlement Payment will be
18 reduced by any legally mandated employee tax withholdings (e.g., employee
19 payroll taxes, etc.), which shall come exclusively from the Total Settlement
20 Amount. Individual Settlement Payments for Class Members who submit
21 valid and timely requests for exclusion will be redistributed to Settlement
22 Class Members who do not submit valid and timely requests for exclusion on
23 a pro rata basis based on their respective Payment Ratios.
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1 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
2 Class Data, the Settlement Administrator shall add up the total number of Pay
3 Periods for all Aggrieved Employees during the PAGA Period. The
4 respective Pay Periods for each Aggrieved Employee will be divided by the
5 total Pay Periods for all Aggrieved Employees, resulting in the “PAGA
6 Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s
7 PAGA Payment Ratio will then be multiplied by the PAGA Settlement to
8 calculate each Aggrieved Employee’s estimated share of the PAGA
9 Settlement.
10

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12 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
13 Settlement Payments shall be allocated and treated as follows: 25% as wages
14 (“Wage Portion”); 75% as penalties and interest (“Non-Wage Portion”). The
15 Wage Portion is subject to wage withholdings and shall be reported on IRS
16 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
17 and shall be reported on IRS Form 1099.
18

19 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
20 Employee Settlement Payments shall be allocated and treated as 100%
21 penalties and shall be reported on IRS Form 1099.
22

23 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
24 individual shares of the PAGA Settlement made to Settlement Class Members
25 and/or Aggrieved Employees under this Settlement Agreement, as well as any
26 other payments made pursuant to this Settlement Agreement, will not be
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utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and individual shares of the PAGA Settlement provided for in this Settlement agreement are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the PAGA Settlement.

7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees last known mailing address no later than fifteen (15) calendar days after the Funding Date.

1 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
2 Employees shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of their issuance. If a Settlement Class Member and/or
4 Aggrieved Employee does not cash his or her settlement check within 90 days,
5 the Settlement Administrator will send a letter to such persons, advising that
6 the check will expire after the 180th day, and invite that Settlement Class
7 Member and/or Aggrieved Employee to request reissuance in the event the
8 check was destroyed, lost or misplaced. In the event an Individual Settlement
9 Payment and/or Aggrieved Employee's individual share of the PAGA
10 Settlement check has not been cashed within one hundred and eighty (180)
11 days, all funds represented by such uncashed checks, plus any interest accrued
12 thereon, shall be distributed consistent with California Code of Civil
13 Procedure Section 384 as follows: to The Children's Advocacy Institute
14 (CAI), founded at the nonprofit University of San Diego School of Law in
15 1989. Class Counsel, Defendant's counsel, nor any of the Parties, have any
16 interest, pecuniary or otherwise, in CAI.

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20 9. Class Representative Service Award. In addition to the Individual Settlement
21 Payment and his individual share of the PAGA Settlement to be paid to
22 Plaintiff, Plaintiff will apply to the Court for an award of not more than
23 \$7,500, as the Class Representative Service Award. Defendant does not
24 presently intend to oppose a Class Representative Service Award of not more
25 than \$7,500 for Plaintiff. The Settlement Administrator shall pay the Class
26 Representative Service Award, either in the amount stated herein if approved
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1 by the Court or some other amount as approved by the Court, to Plaintiff from
2 the Total Settlement Amount no later than ten (10) calendar days after the
3 Funding Date. Any portion of the requested Class Representative Service
4 Award that is not awarded to the Class Representative shall be part of the Net
5 Settlement Amount and shall be distributed to Settlement Class Members as
6 provided in this Agreement. The Settlement Administrator shall issue an IRS
7 Form 1099 — MISC to Plaintiff for his Class Representative Service Award.
8 Plaintiff shall be solely and legally responsible to pay any and all applicable
9 taxes on his Class Representative Service Award and shall hold harmless the
10 Released Parties from any claim or liability for taxes, penalties, or interest
11 arising as a result of the Class Representative Service Award. The Class
12 Representative Service Award shall be in addition to Plaintiff's Individual
13 Settlement Payment as a Settlement Class Member. Approval of this
14 Settlement shall not be conditioned on Court approval of the requested amount
15 of the Class Representative Service Award. In the event that the Court reduces
16 or does not approve the requested Class Representative Service Award,
17 Plaintiff shall not have the right to revoke the Settlement, and it will remain
18 binding.
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- 22 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
23 attorneys' fees not to exceed one-third of the Total Settlement Amount
24 currently estimated to be \$33,334, plus costs and expenses supported by
25 declaration not to exceed Twelve Thousand Five Hundred Dollars (\$12,500),
26 from the Total Settlement Amount will be filed. Any portion of the requested
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1 Class Counsel Award that is not awarded to Class Counsel shall be part of the
2 Net Settlement Amount and shall be distributed to Settlement Class Members
3 as provided in this Agreement. The Settlement Administrator shall allocate
4 and pay the Class Counsel Award to Class Counsel from the Total Settlement
5 Amount no later than five (5) calendar days after the Funding Date. Class
6 Counsel shall be solely and legally responsible to pay all applicable taxes on
7 the payment made pursuant to this paragraph. The Settlement Administrator
8 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
9 made pursuant to this paragraph. In the event that the Court reduces or does
10 not approve the requested Class Counsel Award, neither Plaintiff nor Class
11 Counsel shall have the right to revoke the Settlement, or to appeal such order,
12 and the Settlement shall remain binding.
13
14

- 15 11. PAGA Settlement. Five Thousand Dollars (\$5,000) shall be allocated from
16 the Total Settlement Amount for settlement of claims for civil penalties under
17 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
18 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
19 Settlement (\$3,750) to the California Labor and Workforce Development
20 Agency no later than twenty-five (25) calendar days after the Funding Date
21 (hereinafter “LWDA Payment”). Twenty-five percent (25%) of the PAGA
22 Settlement (\$1,250) will be distributed to the Aggrieved Employees as
23 described in this Agreement (hereinafter “Aggrieved Employee Payment”).
24 For purposes of distributing the PAGA Settlement to the Aggrieved
25 Employees, each Aggrieved Employee shall receive their pro-rata share of the
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1 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
2 above.

- 3
4 12. Settlement Administration Costs. The Settlement Administrator shall be paid
5 for the costs of administration of the Settlement from the Total Settlement
6 Amount. The estimate of the Settlement Administration Costs is \$6,000.00
7 The Settlement Administrator shall be paid the Settlement Administration
8 Costs no later than twenty-five (25) calendar days after the Funding Date.
9

- 10 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
11 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
12 twenty-eight (28) days following the expiration of the Response Deadline, which
13 motion shall request final approval of the Settlement and a determination of the
14 amounts payable for the Class Representative Service Award, the Class Counsel
15 Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will
16 provide Defendant with a draft of the Motion at least 3 business days prior to the filing
17 of the Motion to give Defendant an opportunity to propose changes or additions to
18 the Motion
19
20

- 21 1. Declaration by Settlement Administrator. No later than fourteen (14) days
22 after the Response Deadline, the Settlement Administrator shall submit a
23 declaration in support of Plaintiff's motion for final approval of this
24 Settlement detailing the number of Notice Packets mailed and re-mailed to
25 Class Members, the number of undeliverable Notice Packets, the number of
26 timely requests for exclusion, the number of objections received, the amount
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1 of the average Individual Settlement Payment and highest Individual
2 Settlement Payment, the Settlement Administration Costs, and any other
3 information as the Parties mutually agree or the Court orders the Settlement
4 Administrator to provide.
5

6 2. Final Approval Order and Judgment. Class Counsel shall present an Order
7 Granting Final Approval of Class Action Settlement to the Court for its
8 approval, and Judgment thereon, at the time Class Counsel files the Motion
9 for Final Approval.
10

11 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
12 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
13 Final Approval, including the Order Granting Final Approval of Class Action
14 Settlement, and Judgment before filing with the Court. The Parties and their counsel
15 will cooperate with each other and use their best efforts to affect the Court's approval
16 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
17 Judgment.
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20 O. Cooperation. The Parties and their counsel will cooperate with each other and use
21 their best efforts to implement the Settlement.
22

23 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
24 except such proceedings necessary to implement and complete the Settlement, pending
25 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
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- 1 Q. Amendment or Modification. This Agreement may be amended or modified only by
2 a written instrument signed by counsel for all Parties or their successors-in-interest.
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- 4 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
5 Agreement among these Parties, and no oral or written representations, warranties or
6 inducements have been made to any Party concerning this Agreement or its Exhibit
7 other than the representations, warranties and covenants contained and memorialized
8 in this Agreement and its Exhibit.
9
- 10 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
11 represent they are expressly authorized by the Parties whom they represent to negotiate
12 this Agreement and to take all appropriate Action required or permitted to be taken by
13 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
14 documents required to effectuate the terms of this Agreement. The persons signing
15 this Agreement on behalf of Defendant represents and warrants that he/she is
16 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
17 warrants that he is authorized to sign this Agreement and that he has not assigned any
18 claim, or part of a claim, covered by this Settlement to a third-party.
19
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- 21 T. No Public Comment: The Parties and their counsel agree that they will not issue any
22 press releases, initiate any contact with the press, respond to any press inquiry, or have
23 any communication with the press about the fact, amount or terms of the Settlement
24 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
25 of its terms for any marketing or promotional purposes. Nothing herein will restrict
26 Class Counsel from including publicly available information regarding this settlement
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1 in future judicial submissions regarding Class Counsel's qualifications and experience.
2 Further, Class Counsel will not include, reference or use the Settlement Agreement for
3 any marketing or promotional purposes, either before or after the Motion for
4 Preliminary Approval is filed.
5

6 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
7 to the benefit of, the successors or assigns of the Parties, as previously defined.
8

9 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
10 shall be governed by and interpreted according to the laws of the State of California.
11

12 W. Counterparts. This Agreement may be executed in one or more counterparts. All
13 executed counterparts and each of them shall be deemed to be one and the same
14 instrument provided that counsel for the Parties to this Agreement shall exchange
15 among themselves copies or originals of the signed counterparts.
16

17 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
18 is a fair, adequate and reasonable settlement of this Action and have arrived at this
19 Settlement after extensive arms-length negotiations, taking into account all relevant
20 factors, present and potential.
21

22 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
23 respect to the interpretation, implementation and enforcement of the terms of this
24 Agreement and all orders and judgments entered in connection therewith, and the
25 Parties and their counsel submit to the jurisdiction of the Court for purposes of
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1 interpreting, implementing and enforcing the settlement and all orders and judgments
2 entered in connection with this Agreement.

3
4 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
5 the Court shall first attempt to construe the provisions valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this
7 Agreement valid and enforceable. Should the Court or any tribunal of valid
8 jurisdiction declare invalid or unenforceable any provision or term of this Agreement,
9 that term or provision shall be severed from the Agreement, and the remaining terms
10 and provisions shall remain in full force and effect.

11
12 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not have any
13 pending lawsuits, administrative complaints or charges against any Released Party,
14 and they do not currently intend to pursue any claims against the Released Parties,
15 including, but not limited to, any and all claims relating to or arising from Plaintiff's
16 employment with Defendant, regardless of whether Class Counsel is currently aware
17 of any facts or legal theories upon which any claims or causes of action could be
18 brought against Released Parties, including those facts or legal theories alleged in the
19 operative complaint in this Action. The Parties further acknowledge, understand and
20 agree that this representation is essential to the Agreement and that this Agreement
21 would not have been entered into were it not for this representation.

22
23
24 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
25 certification for purposes of this settlement only.
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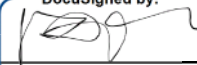
1 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
2 Released Claims have merit and give rise to liability on the part of Defendant.
3 Defendant claims that the Released Claims have no merit and do not give rise to
4 liability. This Agreement is a compromise of disputed claims. Nothing contained in
5 this Agreement and no documents referred to and no action taken to carry out this
6 Agreement may be construed or used as an admission by or against the Defendant or
7 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
8 than as may be specifically set forth herein, each Party shall be responsible for and
9 shall bear its/his own attorney's fees and costs.
10

11
12 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

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14 DATED: 1/15/2022

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ERIK FOSS

DocuSigned by:

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IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: 01/04/2022

ANDERSON HOSPITALITY INC.

Anil Patel

Printed Name

Vice President

Title

///
///
///
///

1 IT IS SO AGREED AS TO FORM BY COUNSEL:
2

3 DATED: 1/15/2022

JCL LAW FIRM, A.P.C.

4 By:

DocuSigned by:
Jean-Claude Lapuyade
0EBC25D5B9CD469...

5 Attorneys for Plaintiff and the Settlement Class
6 Members
7
8

9 DATED: 1/15/2022

ZAKAY LAW GROUP, APLC

10 By:

DocuSigned by:
[Signature]
4ECDE73A91D4420...

11 Attorneys for Plaintiff and the Settlement Class
12 Members
13
14

15 DATED: 1/18/2022

JASON ROSS
WOOD, SMITH, HENNING & BERMAN LLP

16 By:

[Signature]

17 Attorneys for Defendant
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EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Foss v. Anderson Hospitality, Inc., Shasta County Superior Court Case No. 195317)

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must timely send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit, pending in the Superior Court for the State of California, County of Shasta (the “Court”), has been reached between Plaintiff Erik Foss (“Plaintiff”) and Defendant Anderson Hospitality, Inc., a California Corporation (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

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

All non-exempt employees who are or previously were employed by Defendant in California during the Class Period.

The “Class Period” is the period of time running from July 2, 2016 to October 31, 2021.

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

2. What is this class action lawsuit about?

On July 2, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Shasta. Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; and (h) Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*

Defendant denies and disputes all claims asserted in the Actions. Specifically, Defendant contended (and continues to contend) that the lawsuit could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that it complied with all applicable laws; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Actions.

On June 1, 2021, the Parties participated in an all-day mediation with Hon. William C. Pate, a respected jurist and an experienced mediator of wage and hour class actions. The mediation concluded without settlement. However, following mediation, each party represented by their respective counsel, were able to reach a settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Hundred Thousand Dollars (\$100,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$6,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$34,334) and a Class Counsel Litigation

Expenses Payment of not more than \$12,500 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the lawsuit on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Class Representative Service Payment. Class Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the lawsuit, and for the risks she undertook.
- PAGA Payment. A payment of \$5,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$3,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$1,250 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of Workweeks worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of Workweeks worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period. The PAGA Period means the period between April 24, 2019 to October 31, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 10% of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 90% of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims vested benefits, unpaid wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have <<____>> Workweeks worked during the Class Period (July 2, 2016 to October 31, 2021).

Based on this information, your estimated Settlement Share is <<____>>.

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

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case ***Foss v. Anderson Hospitality Inc., Case No. 195317***." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Foss v. Anderson Hospitality Inc., Case No. 195317***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.

JCL Law Firm, APC

5440 Morehouse Drive , Suite

3600San Diego, CA 92121

Tel.: (619) 599-8292

Fax: (619) 599-2891

E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.

Zakay Law Group, APLC

5440 Morehouse Drive, Suite

3600San Diego, CA 92121Tel: (619)

599-8292

Fax: (619) 599-8291

Email: shani@zakaylaw.com

Website: www.zakaylaw.com

Counsel for Defendant:

Jason Ross

Wood, Smith, Henning & Berman

LLP

501 West Broadway, Suite 1200

San Diego, CA 92101

Tel.: (619) 849-4900

Fax: (619) 849.4950

E-Mail: jross@wshblaw.com

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

The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the Shasta County Superior Court, located at 1500 Court Street, Redding, CA 96001 before Judge Stephen H. Baker. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

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

You may call the Settlement Administrator at _____ or write to *Foss v. Anderson Hospitality Inc., Case No. 195317*, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Participating Class Members who cashed his or her Settlement Share check using the same workweek formula used for distribution of the Net Settlement Amount. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2