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Attorneys for Plaintiff, ELFA CASTRO on behalf of herself and a Class of all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CIVIL COMPLEX CENTER

ELFA CASTRO, on behalf of herself and on
behalf of a Class of all other persons similarly
situated

Plaintiff,

vs.

BAYMONT INN & SUITES, an unknown
business entity; VIENNA CAPITAL, INC., an
unknown business entity; WYNDHAM HOTEL
GROUP LLC; an unknown business entity;
XIANGJUN LI, an individual, and DOES 1
through 100, inclusive,

Defendants

Case No.: 30-2016-00840094-CU-OE-CXC
CLASS ACTION

Assigned For All Purposes To:

Hon. Peter Wilson

Dept.: CX-102

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 17, 2019

Time: 2:00 p.m.

Dept: CX-102

Complaint filed: March 10, 2016

First Amended Complaint: May 3, 2016

1 Additional Plaintiff's Counsel

2 MARC H. PHELPS (SBN 237036)

3 **THE PHELPS LAW GROUP**

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1 **PLAINTIFF'S RESPONSES TO COURT'S SEPTEMBER 12, 2019 TENTATIVE RULING**

2 **COURT'S RULING ITEM 1:**

3 Plaintiff should clarify whether the class consists of 75 or 95 members. (See e.g. Motion, p.
4 1:5-6; Henry Decl., ¶ 4.) If there are 95 members, explain how the class size increased from 75 at
5 preliminary approval to 95 at final approval. (Henry Decl., ¶ 4.) Further, Plaintiff should address
6 whether the settlement is still fair, adequate, and reasonable given that the class size increased by
7 26. 7%, materially decreasing the payment to each class member.

8 **RESPONSE TO ITEM 1:**

9 The class currently consists of **94** members. The estimate of **75** was based on the data presented
10 prior to mediation and was the basis for the settlement in **September 2018**. After the Court granted
11 preliminary approval, Defendant sent a revised class list (per Court order) on **June 21, 2019**, which
12 included **95** class members. Apparently, while awaiting preliminary approval on **June 13, 2019**, the
13 class size grew by approximately 20 members. Nevertheless, the settlement remains fair, adequate and
14 reasonable even with 20 additional class members as the settlement payments are based on the number
15 of workweeks, and the new members should not have a large number of workweeks so and would not
16 substantially dilute the payments to the original class members. **See Quintilone Dec., ¶3; Henry Dec.,**
17 **¶ 4.**

18 **COURT'S RULING ITEM 2:**

19 Settlement administration costs of \$10,000 seem high given that there are only, at most, 95
20 class members. An invoice or breakdown of the costs should be provided.

21 **RESPONSE TO ITEM 2**

22 The claims administrator has attached an invoice including a breakdown of the costs. See
23 **Exhibit B to Henry Dec., ¶11.**

24 **COURT'S RULING ITEM 3:**

25 Aside from the 8 notices deemed undeliverable in the 8/20/19 Henry Declaration, have any
26 additional notices been deemed undeliverable?

27 **RESPONSE TO ITEM 3**

28 No additional notices have been deemed undeliverable. **See Exhibit A to Henry Dec., ¶4.**

1 **COURT’S RULING ITEM 4:**

2 Has the response deadline for all the re-mailed notices lapsed? If not, when is the last
3 deadline?

4 **RESPONSE TO ITEM 4:**

5 The response deadline has passed for all the re-mailed notices. **See Henry Dec., ¶4;**
6 **Exhibit A.**

7 **COURT’S RULING ITEM 5:**

8 Have any additional objections, disputes, or requests for exclusion been received since the
9 8/20/19 Henry Declaration?

10 **RESPONSE TO ITEM 5:**

11 No additional notices have been deemed undeliverable. **See Henry Dec., ¶¶5 and 6;**
12 **Exhibit A.**

13 **COURT’S RULING ITEM 6:**

14 Please state the estimated lowest payment. (See Henry Decl., ¶ 13.)

15 **RESPONSE TO ITEM 6:**

16 The estimated lowest payment is **\$19.31**. **See Henry Dec., ¶¶ 9 and 10.**

17 **COURT’S RULING ITEM 7:**

18 Please confirm the Settlement has been served on the LWDA. (Quintilone Decl., ¶ 12
19 [stating counsel will submit the settlement to the LWDA concurrently with the motion].) Counsel
20 must also provide proof of service of the moving papers and this order on the LWDA.

21 **RESPONSE TO ITEM 7:**

22 The Settlement has been served on the LWDA. May 14, 2019, June 21, 2019. The Court’s
23 September 12, 2019 tentative ruling was served on the LWDA on September 11, 2019. See Exhibit
24 B. The Moving papers and amendments were served on the LWDA on October 8, 2019. **See**
25 **Exhibit A to Quintilone Dec., ¶ 5.**

26 **COURT’S RULING ITEM 8:**

27 Plaintiff’s counsel should state how it intends to provide notice to the class of the judgment.
28 (See CRC 3.771(b).) This should also be included in the proposed order.

1 **RESPONSE TO ITEM 8:**

2 Since every class member is receiving a notice and a check, they are receiving notice of the
3 subsequent judgment which satisfies Cal. Rules of Court Rule 3.771(b). If the Court requires,
4 Counsel can provide further notice to the class of the judgment through the settlement website
5 operated by the claim administrator. **See Quintilone Dec., ¶4.**

6 **COURT'S RULING ITEM 9:**

7 Should the Settlement be approved, the Court will hold a status conference for a final
8 accounting. Plaintiffs shall submit a final report at least **10 days** prior to that conference regarding
9 the status of the settlement administration. Counsel should include a date for the final accounting
10 in the proposed order. The final accounting should occur after the deadline for class members to
11 cash their checks. The final report must include all information necessary for the Court to
12 determine the total amount actually paid to class members and the amount to be tendered to the
13 State Controller's Office.

14 **RESPONSE TO ITEM 9:**

15 Counsel has provided a date for a final accounting hearing in the proposed order.

16 **COURT'S RULING ITEM 10:**

17 The proposed order is to be revised consistent with the issues addressed above.

18 **RESPONSE TO ITEM 10:**

19 See Revised Proposed Order concurrently filed with this supplemental brief.

20 **COURT'S RULING ITEM 11:**

21 The class definition in paragraph 6 of the proposed order does not match the settlement.
22 (Settlement, ¶¶5 and 11.)

23 **RESPONSE TO ITEM 11:**

24 See Revised Proposed Order at paragraph 12 concurrently filed with this supplemental
25 brief.

1 Dated: October 8, 2019

2 **QUINTILONE & ASSOCIATES**

3 

4 By: _____

5 RICHARD E. QUINTILONE II

6 ANDREW H. HAAS

7 ALEJANDRO QUINONES

8 Attorneys for Plaintiff ELFA CASTRO and the Class, in
9 association with Class Counsel listed above
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I am a citizen of the United States, over the age of 18 years, and not a party to the within action. I am an employee of or agent for Quintilone & Associates, whose business address is 22974 El Toro Rd., Suite 100, Lake Forest, CA 92630-4961.

SUPPLEMENTAL DECLARATION OF WILL HENRY

SEE ATTACHED SERVICE LIST

(BY OVERNIGHT DELIVERY) I caused a true copy of each document, placed in a sealed envelope with delivery fees provided for, to be deposited in a box regularly maintained by Federal Express or Overnight Express. I am readily familiar with this firm's practice for collection and processing of documents for overnight delivery and know that in the ordinary course of Quintilone & Associates' business practice the document(s) described above will be deposited in a box or other facility regularly maintained by Federal Express or Overnight Express or delivered to a courier or driver authorized by Federal Express or Overnight Express to receive documents on the same date it is placed at Quintilone & Associates for collection.

____X____ **(BY ELECTRONIC SERVICE)** I delivered each such document by electronic means pursuant to California Civil Code, Code of Civil Procedure, the Local Rules and/or FRCP § 5(b)(2), et seq.

 X (STATE) I declare under penalty of perjury that the above is true and correct.

ANDREW H. HAAS

1 **SERVICE LIST**

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21 **Q&A Case No.: 15.01233**
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