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VIENNA CAPITAL, INC. dba BAYMONT INN & SUITES and XIANGJUN LI

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

JOINT STIPULATION FOR CLASS ACTION SETTLEMENT

Complaint Filed: March 10, 2016

FAC Filed: May 3, 2016

Trial Date: None set

1 **JOINT STIPULATION FOR CLASS ACTION SETTLEMENT**

2 Subject to final approval by the Court, which counsel and the parties agree to pursue and
3 recommend in good faith, this Joint Stipulation of Class Action Settlement and Private Attorney
4 General Act Settlement and Release (“Settlement Agreement” or “Settlement” or “Agreement”) is
5 made and entered into by and between Plaintiff Elfa Castro, individually and on behalf of all employees
6 similarly situated (“Plaintiff”) and Defendants Vienna Capital, Inc. dba Baymont Inn & Suites
7 (“Baymont”) and Xiangjun Li (“Li”) (collectively “Defendants”). Plaintiff and Defendants will be
8 collectively referred to as “the Parties.”

9 **RECITALS**

10 This Settlement Agreement is made and entered into by and between Plaintiff and Defendants,
11 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties expressly
12 acknowledge that this Settlement Agreement is entered into after a mediation with and follow-up
13 negotiations through Michelle Reinglass Esq. and is solely for the purpose of compromising
14 significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by
15 Defendants. If for any reason the Settlement is not approved, it will be of no force or effect, and the
16 Parties shall be returned to their original respective positions.

17 **DEFINITIONS**

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

20 1. “**Action**” means *Elfa Castro v. Vienna Capital, Inc. dba Baymont Inn & Suites, et al.*,
21 Orange County **Case No.: 30-2016-00840094-CU-OE-CXC**, filed **March 10, 2016**, in California
22 Superior Court, County of Orange, before Hon. Kim G. Dunning, Dept. CX-104, with the operative
23 First Amended Complaint being filed on **May 3, 2016**.

24 2. “**Class Counsel**” means Richard E. Quintilone II, Esq., and George A. Aloupas, Esq.
25 of Quintilone & Associates, 22974 El Toro Road Suite 100, Lake Forest, CA 92630. Roger R. Carter
26 Esq. and Bianca A. Sofonio Esq. of The Carter Law Firm, 23 Corporate Plaza., Suite 150, Newport
27 Beach, CA 92660, Marc H. Phelps Esq., The Phelps Law Group, 23 Corporate Plaza, Suite 150,
28 Newport Beach, CA 92660.

1 3. **“Class Counsel’s Fee and Cost Award”** means attorneys’ fees agreed approved by the
2 Court for Class Counsel’s litigation and resolution of this Action, and all reasonable costs incurred and
3 to be incurred by Class Counsel in this Action, including, but not limited to, fees, costs and any and all
4 other expenses associated with documenting the Settlement Agreement, securing the Court’s approval
5 of the Settlement Agreement, and obtaining entry of the dismissal terminating this Action. Defendants
6 agree not to oppose Class Counsel’s request for the Class Counsel’s Fee and Cost Award of up to one-
7 third of the Class Settlement Amount, or Sixty-Two Thousand Seven Hundred Dollars and zero cents
8 (**\$62,700.00**), and costs not to exceed Six Thousand Dollars and Zero Cents (**\$6,000.00**) subject to the
9 Court’s final approval of this Settlement Agreement and subject to the exhaustion of any and all
10 appeals. Any portion of the Class Counsel’s Fee and Cost Award not awarded to Class Counsel shall
11 be added to the Net Settlement Amount for distribution to the Participating Class Members. Class
12 Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the Class Counsel’s Fee
13 and Cost Award.

14 4. **“Class List and Data Report”** means a complete list of all Class Members that
15 Defendants will diligently and in good faith compile from its records and provide to the Settlement
16 Administrator within **fifteen (15) business days** after Preliminary Approval of this Settlement. The
17 Class List shall be formatted in Microsoft Office Excel and shall include each Class Member’s full
18 name; most recent mailing address, Social Security Number, and dates of employment as a Class
19 Member.

20 5. **“Class Member(s)”** or **“Settlement Class”** means “All persons employed by
21 Defendants in the State of California, at any time from **March 10, 2012** through preliminary approval,
22 currently estimated at 75 individuals, who have worked as non-exempt employees.”

23 6. **“Class Representative Enhancement Payment”** or **“Enhancement Payment”** means
24 the amount to be paid to Plaintiff Elfa Castro in recognition of her effort and work in prosecuting this
25 Action on behalf of the Class Members and approved by the Court. Defendants agree not to oppose
26 Class Counsel’s request for a Class Representative Enhancement Payment to be paid to Plaintiff from
27 the Class Settlement Amount in the amount of **Ten Thousand Dollars and Zero Cents (\$10,000.00)**,
28 subject to the Court’s final approval of this Settlement and subject to the exhaustion of any and all

appeals. Any portion of the Class Representative Enhancement Payment not awarded to Plaintiff shall be added to the Net Settlement Amount for distribution to the Participating Class Members.

7. “**Class Settlement Amount**” means the maximum settlement amount of One Hundred Ninety Thousand Dollars and Zero Cents (**\$190,000.00**) to be paid by Defendants pursuant to the Settlement. The settlement is **non-reversionary**, meaning none of the settlement amount will revert back to Defendants. The Class Settlement Amount includes all Individual Settlement Payments to Participating Class Members, the Class Representative Enhancement Payment to Plaintiff Elfa Castro, Settlement Administration Costs to the Settlement Administrator, the PAGA Payment, Class Counsel’s Fee and Costs Award. The Class Settlement amount **excludes** the employer’s employment taxes which will be paid outside of the settlement, but does include the employee’s employment taxes, including employee FICA, FUTA and SDI contributions, on the wage portion of the Settlement. This Class Settlement Amount has been agreed to by Plaintiff and Defendants based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendants be liable for more than the Class Settlement Amount and applicable taxes. Defendants maintain no reversionary right to any portion of the Class Settlement Amount. Upon the Court’s Final Approval of the Settlement, the entire Class Settlement Amount will be paid by Defendants and no part of the Class Settlement Amount will revert to Defendants.

8. “**Complaint**” means the operative First Amended Complaint filed in this Action.

9. “**Counsel for Defendants**” or “**Defense Counsel**” means Michael J. Murtaugh, Esq., and Matthew W. Johnson, Esq. of Murtaugh Treglia Stern & Deily, LLP, 2603 Main Street, Penthouse, Irvine, CA 92614-6232.

10. “**Court**” means the California Superior Court for the County of Orange, or any other court taking jurisdiction of this Action.

11. “**Defendants**” means Defendant Vienna Capital, Inc. dba Baymont Inn & Suites and individual Defendant Mr. Xiangjun Li.

12. “**Effective Date**” means the earlier of (a) **15 calendar days** after the date of entry of Order granting Final Approval of this Agreement and judgment/dismissal is entered, **if no objection to the Agreement is filed**; (b) the date on which the time for all appeals from the Order granting Final

Approval and/or the dismissal of the action has passed if an objection is lodged; or (c) if an appeal is taken, the date on which any reviewing court issues a decision, the time for further appeal has expired, and the trial court has regained jurisdiction.

13. **“Final Approval”** means the Court order granting final approval of the Settlement.

14. **“Individual PAGA Payment”** means each PAGA Member’s share of the PAGA Payment allocated for payment to PAGA Members based on his or her *pro rata* share based on the number of Work Weeks worked from **March 10, 2015**, through Preliminary Approval of the Agreement.

15. **“Individual Settlement Payment”** means each Participating Class Member’s share of the Net Settlement Amount, less employee portions of state and federal withholding taxes, including the employee FICA, FUTA and SDI contributions and any other applicable payroll deductions required by law as a result of the payment of the amount allocated to each Participating Class Member on the wage portion of the Individual Settlement Payments, based on his or her *pro rata* share based on the number of Work Weeks worked by the Participating Class Member from **March 10, 2012** through Preliminary Approval of the Agreement.

16. **“Net Settlement Amount”** means the portion of the Class Settlement Amount remaining after deduction of the Court-approved Class Representative Enhancement Payment, Settlement Administration Costs, the PAGA Payment, Court-approved Class Counsel’s Fee and Costs Award and employee taxes on the wage portion of the Individual Settlement Payments. The entire Net Settlement Amount will be distributed to Participating Class Members after Final Approval of the Settlement. If the Court approves all of the above listed deductions from the Class Settlement Amount, the Net Settlement Amount that will be completely distributed to the Participating Class Members is estimated to be approximately **\$102,300.00**.

17. **“Notice of Objection”** means a Class Member’s valid and timely written objection to the Settlement. For the Notice of Objection to be valid, it must be: (a) signed by the Class Member, (b) filed with the Court and served on all parties, and (c) postmarked on or before the Response Deadline.

18. **“Notice Packet”** means the Notice of Proposed Class Action Settlement and Final Fairness and Approval Hearing and Mailing Envelope, substantially in the form attached hereto as

Exhibit A.

19. “**PAGA Member(s)**” means all current and former non-exempt employees who are/were employed by Defendants in the State of California at any time from **March 10, 2015**, through Preliminary Approval of this Settlement.

20. “**PAGA Payment**” means the portion of the Class Settlement Amount that the Parties have agreed will be allocated and paid under the California Private Attorney General Act, California Labor Code § 2699 et seq. (“PAGA”) as and for consideration of the PAGA Released Claims. The Parties have agreed that Five Thousand Dollars and Zero Cents (**\$5,000.00**) of the Class Settlement Amount shall be allocated as the PAGA Payment. Pursuant to the PAGA, 75%, or Three Thousand Seven Hundred and Fifty Dollars and Zero Cents (**\$3,750.00**), of the PAGA Settlement Amount shall be paid to the California Labor and Workforce Development Agency (“LWDA”), and 25%, or One Thousand Two Hundred and Fifty Dollars and Zero Cents (**\$1,250.00**), of the PAGA Settlement Amount shall be distributed to all PAGA Members. All PAGA Members will receive his/her *pro rata* share of the 25% of the PAGA Payment based on Work Weeks, regardless of whether they are Participating Class Members, as there is no right to opt out of the Court-approved PAGA Released Claims as set forth in Paragraph 48 below.

21. “**PAGA Released Claims**” means, all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, rights, demands, liabilities, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, pursuant to the PAGA that is predicated upon any alleged violations of the California Labor Code, including alleged violations of California Business & Professions Code § 17200 based on violations of the California Labor Code, that occurred at any time between **March 10, 2015**, and date of Preliminary Approval of this Agreement.

22. “**Participating Class Members**” means Plaintiff Elfa Castro and all Class Members who do not submit valid Requests for Exclusion.

23. “**Parties**” means Plaintiff and Defendants collectively.

24. “**Plaintiff**” means Elfa Castro, individually and on behalf of all employees similarly situated.

25. **“Preliminary Approval”** means the Court order granting preliminary approval of the Settlement.

26. **“Released Claims”** means, the Class Members shall fully and finally release and discharge the Released Parties from any and all of claims, causes of action, damages, wages, benefits, expenses, penalties, debts, rights, demands, liabilities, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, arising from, or related to the same set of operative facts as those alleged in the Complaint against Defendants, as follows: (1) all claims for alleged violations of the California Labor Code; (2) all claims for alleged violations of California Business & Professions Code § 17200 which are premised on alleged violations of the Labor Code; (3) the PAGA Released Claims; (4) the Wage Orders of the California Industrial Welfare Commission; and (4) the Fair Labor Standards Act, 29 U.S.C. §§201 et seq., by cashing any settlement check, each Class Member thereby opt-in to the Settlement and expressly release their claims under the Fair Labor Standards Act.

27. **“Released Claims Period”** means the period from **March 10, 2012** to the date of Preliminary Approval of this Agreement.

28. **“Released Parties”** means Defendants, and their former and present members, parents, subsidiaries, affiliates, divisions, fiduciaries, corporations in common control, predecessors, successors, and assigns, as well as all past and present officers, directors, employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives, including, but not limited to, VIENNA CAPITAL, INC. dba BAYMONT INN & SUITES representatives, and WYNDHAM HOTEL GROUP LLC.

29. **“Request for Exclusion”** means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail, email, or fax to the Settlement Administrator at the specified address indicated in the Notice Packet; (d) clearly state that

the Class Member does not wish to be included in the Settlement; and (e) be postmarked on or before the Response Deadline.

30. “**Response Deadline**” means the deadline by which a Class Member must postmark or fax to the Settlement Administrator valid Requests for Exclusion, or file objections to the Settlement. The Response Deadline will be **forty-five (45) calendar days** from the initial mailing of the Notice Packet by the Settlement Administrator. The Response Deadline may be extended only by an Order of the Court, or upon express agreement between Class Counsel and Defense Counsel, and subsequent approval by the Court. Under no circumstances will the Settlement Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion, or objection to the Settlement.

31. “**Settlement Administrator**” means **CPT Group, Inc.**, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

32. “**Settlement Administration Costs**” means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. The Settlement Administration Costs to be paid from the Class Settlement Amount are currently estimated to be Ten Thousand Dollars and Zero Cents (**\$10,000.00**). To the extent actual Settlement Administrations Costs are greater than **\$10,000.00**, such excess amount shall be paid exclusively from the Class Settlement Amount.

33. “**Work Weeks**” means the number of weeks of employment for each: (i) Class Member during the Released Claims Period; and (ii) PAGA Member during the period of time commencing **March 10, 2015** through Preliminary Approval. A Work Week will be counted so long

1 as a Class Member and/or PAGA Member was employed at least one day within a Work Week. To the
2 extent any individual is/was both a Class Member and a PAGA Member during the Released Claims
3 Period, overlapping Work Weeks will not be double-counted, but will instead be treated as single
4 Work Weeks.

5 **PROCEDURAL HISTORY AND DISCOVERY**

6 34. On **March 15, 2016**, Plaintiff submitted a PAGA Notice Letter to the LWDA and
7 provided a copy of the Complaint that would be filed to initiate this action and sent the Notice Letter
8 and Complaint by certified mail to Defendants.

9 35. The original complaint which initiated this action was originally filed in the Orange
10 County Superior Court on **March 10, 2016**. The Complaint (i.e. the First Amended Complaint) was
11 filed on May 3, 2016. On **June 27, 2016**, Defendants filed their Answer, generally denying the
12 Complaint allegations and asserting forty-seven (47) affirmative defenses.

13 36. Plaintiff asserted the following claims in the operative Complaint: (1) failure to pay
14 minimum wages and the FLSA; (2) Failure to Pay Wages including Overtime in violation of Labor
15 Code § 1194; (3) Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7 and 510; (4)
16 Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 510; (5) Failure to Provide
17 Accurate Itemized Wage Statements in violation of Labor Code § 226; (6) Failure to Pay Wages for
18 Hours Worked; (7) Failure to Comply with Written Requests to Inspect or Copy Records; (8) Failure
19 to Pay Wages Due and Payable Twice Monthly in violation of Labor Code § 204; (9) Failure to Pay
20 Wages Upon Termination of Employment in violation of Labor Code § 203; (10) violations of the
21 Unfair Competition Law (California Business and Professions Code § 17200 *et seq.*; and (11)
22 violation of the PAGA. The putative class in the Complaint included all non-exempt, hourly
23 employees working for Defendants from **March 10, 2012** through the date of preliminary approval in
24 the Action.

25 37. The Parties engaged in extensive discovery, including written discovery which was
26 propounded to Defendants on **July 22, 2016**. On **September 30, 2016**, Defendants provided their
27 responses. Responses to written discovery and documents served by Defendants were substantial
28 with various documents such as Class Member pay stubs and time sheets being produced which gave

1 Plaintiff's counsel a chance to estimate the amount of damages that were incurred by the Class
2 Members as a result of the alleged violations of Defendants.

3 38. On **March 17, 2017**, the parties filed a Stipulated Protective Order for the Court's
4 approval which detailed the conduct of discovery and use of the documents produced. The parties
5 have also conducted informal discovery in this action, including Defendants providing an updated
6 Class List and work week numbers for the employee Class Members and confirming the policies and
7 practices that were in place during the relevant time period.

8 39. On **February 6, 2018**, the Parties attended an all-day mediation in Santa Ana,
9 California with Michelle Reinglass, Esq., an extremely skilled and highly-respected mediator in the
10 area of wage and hour class action lawsuits. Although the mediation was not successful on **February**
11 **6, 2018**, the mediator stayed persistent and constantly communicated with counsel who continued
12 formal and informal discovery, and eventually was able to convince both sides that settlement was in
13 the best interest for all parties involved. After over a year of continued negotiations, a settlement was
14 finally able to be reached on **Friday, August 24, 2018**.

15 **STIPULATION FOR CLASS CERTIFICATION**

16 40. The Parties stipulate and agree to the conditional certification of the Settlement Class
17 with regard to the Released Claims for purposes of Settlement only. Should, for whatever reason, the
18 Court fail to issue Final Approval of the Settlement, the Parties' stipulation to class certification as
19 part of the Settlement shall become null and *void ab initio* and shall have no bearing on and shall not
20 be admissible in connection with the issue of whether certification would be appropriate in a non-
21 settlement context. Defendants expressly reserve their rights and declare that they would continue to
22 oppose class certification and the substantive merits of the case should the Court fail to issue Final
23 Approval of the Settlement. Plaintiff expressly reserves her rights and declares that she will continue
24 to pursue class certification and a trial should the Court fail to issue Final Approval of the Settlement.

25 **INADMISSIBILITY OF SETTLEMENT AGREEMENT**

26 41. Whether the Court fails to grant Final Approval of the Settlement, neither this
27 Agreement, nor any of its terms, nor any document, statement, proceeding or conduct related to this
28 Agreement, nor any reports or accounts thereof, shall in any event be:

1 (a) Construed as, offered or admitted in evidence as, received as, or deemed to be
2 evidence for any purpose adverse to the Released Parties, including, but not limited to,
3 evidence of a presumption, concession, indication or admission by any of the Released Parties
4 of any liability, fault, wrongdoing, omission, concession or damage except for purposes of
5 settling this Action or enforcing the Released Claims contained herein pursuant to the terms of
6 this Settlement Agreement;

7 (b) Disclosed, referred to or offered or received in evidence against any of the
8 Released Parties in any further proceeding in the Action or any other civil, criminal or
9 administrative action or proceeding except for purposes of settling this Action or enforcing
10 the Released Claims contained herein pursuant to the terms of this Settlement Agreement; or

11 (c) Used in any other way or for any other purpose except for: (i) purposes of
12 settling this action or enforcing the Released Claims contained herein pursuant to the terms of
13 this Settlement Agreement; or (ii) as evidence of relative value of claims in mediation,
14 Preliminary Approval and/or Final Approval when settling matters against parties other than
15 the Released Parties, in which case only public information may be provided.

16 **INVESTIGATION OF THE CLAIMS**

17 42. The Parties have conducted significant investigation of the facts and law both before
18 and after the Action was filed. Such investigations have included exchange of voluminous
19 information pursuant to formal and informal discovery, meetings and conferences, putative class
20 members and potential witnesses. Counsel for the Parties have also further investigated the
21 applicable law as applied to the facts, discovery regarding the Released Claims, the defenses thereto,
22 and the damages, penalties and other relief sought by Plaintiff and the Class. Plaintiff Elfa Castro and
23 Class Counsel have fully investigated the factual and legal bases for the causes of action asserted in
24 the Action.

25 **BENEFITS OF SETTLEMENT TO CLASS AND PAGA MEMBERS**

26 43. Plaintiff and Class Counsel have considered the expense and length of continued
27 proceedings necessary to continue this Action against Defendants through trial and any possible
28 appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of the

outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class certification. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the Released Claims, Defendants' defenses thereto, and the difficulties in establishing the alleged entitlement to damages, penalties and/or any other remedies by Plaintiff, the Class Members and the PAGA Members. Plaintiff and Class Counsel have also considered recommendations of the Mediator, who is highly experienced in employment litigation, including wage and hour class actions. Based on the foregoing and Class Counsel's experience in similar wage-and-hour cases, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is fair, adequate, and reasonable, and is in the best interests of the Settlement Class and PAGA Members. Defendant and its counsel do not dispute that this Settlement is fair, reasonable, and adequate under all of the circumstances.

SETTLEMENT COMPONENTS AND PROCESS

44. ***NOW, THEREFORE, IT IS HEREBY STIPULATED***, by Plaintiff Elfa Castro on behalf of the Class Members and PAGA Members on the one hand, and Defendants on the other hand, and subject to the approval of the Court, that the Action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Agreement and that upon the Effective Date, and the payment by Defendants of all monies due under the Agreement, the Parties shall file a Satisfaction of Judgment with the Court, subject to the continuing jurisdiction of the Superior Court as set forth below, and subject to the following terms and conditions

45. **Funding of the Class Settlement Amount**. Within **ten (10) calendar days** after the Effective Date, Defendants shall make a one-time deposit of the Class Settlement Amount into a Qualified Settlement Account to be established by the Settlement Administrator. The Class Settlement Amount shall be used to pay: (1) the Net Settlement Payment, including the Individual Settlement Payments and the employees' employment taxes, including employee FICA, FUTA and SDI contributions, on the wage portion of the Settlement; (2) Class Counsel's Award; (3) the Class Representative Enhancement Payment; (4) Settlement Administration Costs; and (5) the PAGA Payment.

1 46. Class Counsel's Fee Award. Defendants agree not to oppose or impede any application
2 or motion to the Court by Class Counsel for the Class Counsel's Fee Award of not more than Sixty-
3 Two Thousand Seven Hundred dollars and zero cents (**\$62,700.00**), and costs not to exceed Six
4 Thousand Dollars and Zero Cents (**\$6,000.00**), which shall be paid from the Class Settlement Amount.
5 The Settlement Administrator shall pay to Class Counsel the Class Counsel's Fee Award approved by
6 the Court within **fifteen (15) calendar days** of Defendants' funding of the Class Settlement Amount.
7 The Settlement Administrator (and not Defendants) shall issue an IRS Form 1099 to Class Counsel
8 reflecting the Class Counsel's Fee Award. Any portion of Class Counsel's Fee Award not approved by
9 the Court shall be added to the Net Settlement Amount.

10 47. Class Representative Enhancement Payment. In recognition of her efforts and work in
11 prosecuting the Action on behalf of Class Members, Defendants agree not to oppose or impede an
12 application or motion by Plaintiff for a Class Representative Enhancement Payment of up to Ten
13 Thousand Dollars and Zero Cents (**\$10,000.00**). The Class Representative Enhancement Payment,
14 which shall be paid from the Class Settlement Amount, shall be in addition to Plaintiff's Individual
15 Settlement Payment and Individual PAGA Payment paid pursuant to the Settlement like the rest of the
16 Participating Class Members and PAGA Members. The Settlement Administrator shall pay to
17 Plaintiff the Class Representative Enhancement Payment approved by the Court within **fifteen (15)**
18 **calendar days** of Defendants' funding of the Class Settlement Amount. The Settlement
19 Administrator (and not Defendants) shall issue an IRS Form 1099 to Plaintiff reflecting the Class
20 Representative Enhancement Payment. Any portion of Class Representative Enhancement Payment
21 not approved by the Court shall be added to the Net Settlement Amount for distribution to the
22 Participating Class Members. Plaintiff Elfa Castro shall be solely and legally responsible to pay any
23 and all applicable taxes on this payment and shall hold harmless Defendants from any claim or
24 liability for taxes, penalties or interest arising as a result of the payment.

25 48. Settlement Administration Costs. The Settlement Administrator shall be paid for the
26 reasonable costs of administration of the Settlement and distribution of payments from the Class
27 Settlement Amount, which are capped at Ten Thousand Dollars and Zero Cents (**\$10,000.00**). The
28 Settlement Administration Costs, which shall be paid from the Class Settlement Amount, shall include,

1 *inter alia*, the required tax reporting on the Individual Settlement Payments, if any, the issuing of 1099
2 IRS Forms, distributing the Notice Packet, calculating and distributing the Class Settlement Amount
3 and Class Counsel's Award, and providing necessary reports and declarations. Any portion of the
4 Settlement Administration Costs not approved by the Court shall be added to the Net Settlement
5 Amount for distribution to the Participating Class Members.

6 49. PAGA Payment. Subject to Court approval, the Parties agree that the amount of Five
7 Thousand Dollars and Zero Cents (**\$5,000.00**) from the Class Settlement Amount shall be designated as
8 the PAGA Payment. Within **fifteen (15) calendar days** of Defendants' funding of the Class
9 Settlement Amount, the Settlement Administrator shall pay 75% of the PAGA Payment (Three
10 Thousand Seven Hundred and Fifty Dollars and Zero Cents (**\$3,750.00**)) to the Labor and Workforce
11 Development Agency. Within **fifteen (15) calendar days** of Defendants' funding of the Class
12 Settlement Amount, the Settlement Administrator shall pay 25% of the PAGA Payment (One
13 Thousand Two Hundred and Fifty Dollars and Zero Cents (**\$1,250.00**)) to the PAGA Members.

14 (a) In light of the binding nature of a PAGA judgment or settlement on non-party
15 employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal.4th 969, and *Cardenas v. McLane*
16 *Foodservice, Inc.*, 2011 WL 379413 at *3 (C.D. Cal. Jan. 31, 2011), PAGA Members (whether
17 or not they are Participating Class Members) shall receive their *pro rata* portion of the 25% of
18 the PAGA Payment and will have been deemed to have fully released the PAGA Released
19 Claims. The Settlement Administrator shall mail the checks with the PAGA Payments to each
20 PAGA Member within **fifteen (15) calendar days** of Defendants' funding of the Class
21 Settlement Amount.

22 (b) To determine each PAGA Member's *pro rata* portion of the PAGA Payment,
23 the Settlement Administrator will use the following formula:
24 Individual PAGA Payment = (\$1,250.00 ÷ Number of Total Work Weeks worked by all
25 PAGA Members from **March 10, 2015** through Preliminary Approval) × Number of total
26 Work Weeks worked by the individual PAGA Member from **March 10, 2015** through
27 Preliminary Approval.

28 50. The Settlement Administrator shall issue a Form 1099 to each PAGA Member for their

1 share of the PAGA Payment. Any amounts awarded for a PAGA Payment less than the amount listed
2 above will result in the non-awarded funds being part of the net Class Settlement Amount available
3 for distribution to the Class Members.

4 51. Net Settlement Amount and Individual Settlement Payments to Participating Class
5 Members. The Net Settlement Amount shall be used to satisfy Individual Settlement Payments to
6 Participating Class Members in accordance with the terms of this Agreement. **Defendants maintain**
7 **no reversionary right to any portion of the Net Settlement Amount.** If there are any timely
8 submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the
9 Individual Settlement Payments for each Participating Class Member so that the amount actually
10 distributed to Participating Class Members equals 100% of the Net Settlement Amount. Within
11 **fifteen (15) calendar days** of Defendants' funding of the Class Settlement Amount, the Settlement
12 Administrator shall distribute the Individual Settlement Payments to Participating Class Members.
13 To determine each Participating Class Member's pro rata portion of the Net Settlement Amount, the
14 Settlement Administrator will use the following formula:

15 Individual Settlement Payment = (Net Settlement Amount ÷ Number of Total Work Weeks
16 worked by all Participating Class Members from **March 10, 2012** through Preliminary
17 Approval) × Number of total Work Weeks worked by the Participating Class Member from
18 **March 10, 2012** through Preliminary Approval.

19 The Individual Settlement Payments shall be managed and administered as follows:

20 a. The Settlement Administrator shall determine the eligibility for, and the amounts
21 of, any Individual Settlement Payments under the terms of this Settlement Agreement. Any disputes
22 not resolved by the Settlement Administrator concerning the administration of the Settlement will be
23 resolved by the Court, venued in Orange County, California, under the laws of the State of California.
24 Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve
25 the dispute without the necessity of involving the Court.

26 b. The Individual Settlement Payments will be reduced by any required legal
27 deductions for each Class Member. All standard employee payroll deductions will be made for state
28

1 and federal withholding taxes, including all employer-owed tax liabilities, as well as any other
2 applicable payroll deductions owed by the Participating Class Members as a result of the Wage
3 Component (See ¶65 below). The Settlement Administrator will issue a check and W-2 Form to each
4 Class member for the wage component (i.e. the 33.33% of each Individual Settlement Payment
5 allocated as wages).

6 c. No withholding shall be made on the interest and statutory and civil penalties
7 portion of the Individual Settlement Payment. The Settlement Administrator will issue a second check
8 and IRS Form 1099 for the interest and penalty component.

9 d. The Settlement Administrator shall be responsible for issuing the payments and
10 calculating and withholding all required employee state and federal taxes and paying those taxes to the
11 government. The Settlement Administrator shall issue all tax forms called for by this Settlement.

12 e. Defendant shall have no obligation to segregate the funds to be used for the Class
13 Settlement Amount from other assets.

14 f. The Settlement Administrator will calculate the employment taxes that the
15 employer is to pay in connection with the wage payments to each Class Member and will advise the
16 Defendant and Defense Counsel of the amount of employment taxes that the Defendant is to send to the
17 government for each Class Member.

18
19 52. Administration Costs Are Capped. The Parties hereby acknowledge that Settlement
20 Administration Costs are capped at **\$10,000.00**. Any portion of the estimated or designated Settlement
21 Administration Costs that are not in fact required to fulfill the total Settlement Administration Costs
22 shall become part of the Net Settlement Amount.

23 53. No Credit Toward Benefit Plans. The Individual Settlement Payments and PAGA
24 Payments made to Class Members and PAGA Members under this Agreement, as well as any other
25 payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits
26 under any benefit plans to which any Class Members may be eligible, including, but not limited to:
27 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
28 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not

1 affect any rights, contributions, or amounts to which any Class Members and/or PAGA Members may
2 be entitled under any benefit plans.

3 54. Settlement Administration Process. The Parties agree to cooperate in the administration
4 of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses
5 incurred in the administration of the Settlement. The Settlement Administrator will provide all services
6 necessary to effectuate the terms of this Agreement including, without limitation, the following:

- 7 a. Establish and maintain an interest-bearing Qualified Settlement Fund account.
- 8 b. Calculate the amounts owed to each Participating Class Member and PAGA
9 Member.
- 10 c. Prior to mailing the Notice Packet, the Settlement Administrator will verify the
11 last known address for each Class Member and PAGA Member through a generally utilized, national
12 address update database.
- 13 d. Printing and mailing the Notice Packet per ¶55 & 57 below
- 14 e. Maintaining a toll-free informational telephone number to assist Class Members
15 who have questions regarding the Notice.
- 16 f. Conducting additional address searches for mailed Notices that are returned as
17 undeliverable. These searches may be done through a class action locator service. To the extent new
18 and more current addresses are found, the Settlement Administrator will also reprint and re-mail
19 Notices accordingly.
- 20 g. Fielding inquiries from Class Members, and administration of any Requests for
21 Exclusion.
- 22 h. Printing and issuance of checks, and preparation of 1099 Forms, and distribution
23 and mailing of all portions of the Class Settlement Amount.
- 24 i. Providing declarations and/or other information to this Court as requested by the
25 Parties and/or the Court.
- 26 j. The Parties agree to cooperate in the Settlement administration process and to
27 make all reasonable efforts to control and minimize costs and expenses incurred. No person shall have
28 any claim against Defendant or Defendant's Counsel, Plaintiff Elfa Castro, Class Members, the Class,

Class Counsel or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.

55. Delivery of the Class List and Data Report. Within **ten (10) calendar days** of Preliminary Approval, Defendants shall provide the Class List and Data Report to the Settlement Administrator.

56. Notice by First-Class U.S. Mail. Within **ten (10) calendar days** after receiving the Class List and Data Report from Defendants, the Settlement Administrator shall mail a Notice Packet to all Class Members and PAGA Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

57. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and shall then perform a re-mailing. Those Class Members who receive a re-mailed Notice Packet shall have the later of (i) an additional **fifteen (15) calendar days** from the remailing or (ii) the Response Deadline, whichever is later. The Parties agree to cooperate with the Settlement Administrator to locate more recent address for Class Members and/or PAGA Members, where necessary.

58. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (1) information regarding the nature of the Action, (2) a summary of the Settlement's principal terms, (3) the Settlement Class definition, (4) each Class Member's estimated Individual Settlement Payment and PAGA Payment and the formula for calculating such payments, (5) the dates which comprise the Released Claims Period and PAGA Released Claims Period, (6) instructions on how to submit valid Requests for Exclusion (to the extent applicable), or objections, (7) the deadlines

1 by which the Class Member must submit Request for Exclusions (to the extent applicable) or file and
2 serve Notices of Objection to the Settlement, (8) the date for the final approval hearing, and (9) the
3 scope of the Released Claims.

4 59. Request for Exclusion Procedures. Any Class Member may opt-out from the Settlement
5 by signing a written Request for Exclusion to the Settlement Administrator postmarked within the
6 Response Deadline. Requests for Exclusion must: (1) contain the name, signature, address, telephone
7 number and the last four digits of the Social Security number of the person requesting exclusion; (2)
8 clearly state that the Class Member does not wish to be included in the Settlement; (3) be returned by
9 mail to the Settlement Administrator at the specified address; and (4) be postmarked on or before the
10 deadline. The date of the postmark on the return mailing envelope shall be the exclusive means to
11 determine whether a Request for Exclusion has been timely submitted. By submitting such a Request
12 for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the
13 class action lawsuit and not be bound by this Agreement, except that exercising the option to opt out
14 does not alter the binding nature of the PAGA Released Claims or remedies pursuant to *Arias v.*
15 *Superior Court*, 46 Cal.4th 969 (2009), and shall not impact his/her entitlement to the *pro rata* portion
16 of the PAGA Payment. Accordingly, a Class Member that timely submits a valid Request for
17 Exclusion will not be entitled to any money under this Settlement other than his/her *pro rata* share of
18 the PAGA Payment. A Class Member who does not timely and properly submit a Request for
19 Exclusion from the Settlement shall be deemed a Participating Class Member and will be bound by all
20 terms of the Settlement, including the releases contained herein.

21 60. Parties' Rights to Void Agreement. If **ten percent (10%)** or more of the Class
22 Members (as calculated as of the time of Preliminary Approval) elect not to participate in the
23 Settlement, Defendants may, at its election, void the Settlement Agreement and all actions taken in
24 furtherance of it will be thereby null and void. Defendants must exercise this right of rescission, in
25 writing, to Class Counsel within **fourteen (14) calendar days** after the Settlement Administrator
26 notifies the Parties of the total and final number of Requests for Exclusions received after the close of
27 the Response Deadline. If Defendants exercise its right to rescind as set forth in this paragraph,
28

Defendants will solely be responsible for all Settlement Administration Costs incurred as of the date of rescission.

61. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not timely and properly submit a Request for Exclusion shall be bound by all of the terms of this Settlement, including those pertaining to the Released Claims, as well as any dismissal that will be entered by the Court assuming and after it grants Final Approval.

62. Objection Procedures. Any Class Member who does not opt-out of this Settlement shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must file a valid Notice of Objection with the Court and serve copies of the Notice of Objection on the Parties before the Response Deadline. The Notice of Objection must be signed by the Class Member and contain all information required by this Settlement. The postmark date of the filing and service shall be deemed the exclusive means for determining that the Notice of Objection is timely. Class Members who fail to object in the manner specified above shall be deemed to have waived all objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement. Class Members who file and serve timely Notices of Objection will have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court, at their own expense. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the orders granting Preliminary Approval or Final Approval, or of the dismissal of the Action. Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. Any Class Member who timely and properly submits a Request for Exclusion shall have no right to object to this Settlement.

63. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or requested. No later than five (5) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide Defense

Counsel and Class Counsel a report showing: (i) the names and number of Class Members who have objected to the Settlement; (ii) the names and number of Class Members who have timely filed a Request for Exclusion; and (iii) the amount owed to each Participating Settlement Class Member.

64. Distribution Timing of Payments of the Class Settlement Amount. Within **15 calendar days** of Defendants' funding the Class Settlement Amount, the Settlement Administrator shall issue payments to (1) Participating Class Members; (2) PAGA Members; (3) the LWDA; (4) Plaintiff; (5) Class Counsel; and (6) the government for the Class Member's taxes. The Settlement Administrator shall also issue a payment to itself for Court-approved services performed in connection with the Settlement.

65. Uncashed Settlement Payment Checks. Any checks issued by the Settlement Administrator to Class Members and PAGA Members shall be negotiable for not less than **one hundred eighty (180) calendar days** from issuance. The Parties agree that California Code of Civil Procedure § 384 is **not** applicable to un-cashed or undeliverable checks as the checks represent wages and not residue. Those funds represented by Settlement Payment Checks returned as undeliverable and those Settlement Payment Checks remaining un-cashed for more than 180 calendar days after issuance will be sent to the California Department of Industrial Relations Unpaid Wages Fund, to be held in trust for each Class Member. In such event, those Class Members will nevertheless remain bound by the Settlement.

66. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

67. Administration Costs if Settlement Fails or is Delayed. If an objection to the Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is not approved by the Court, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

68. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: one-third (33.33%) of each Individual Settlement Payment shall be allocated as

wages which will be subject to IRS federal tax withholdings; one third (33.33%) shall be allocated as statutory and civil penalties which are not subject to tax; and the remaining one-third (33.33%) shall be allocated as interest. The amount of all payments to Class Members and PAGA Members shall be reported on an IRS Form 1099 by the Settlement Administrator.

69. Administration of Taxes by the Settlement Administrator. The Settlement Administrator shall be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class Counsel, 1099 forms or other tax forms as may be required by law for all amounts paid pursuant to this Agreement.

70. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff, Participating Class Members and PAGA Members are not relying on any statement, representation, or calculation by Defendants or by the Settlement Administrator in this regard. Plaintiff, Participating Class Members and PAGA Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein and will defend, indemnify, and hold Defendants free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages.

71. 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

1 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
2 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
3 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
4 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
5 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY
6 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
7 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
8 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING
9 PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,
10 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

11 72. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
12 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
13 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
14 of action or right herein released and discharged.

15 73. General Release by Plaintiff Elfa Castro. In addition to the releases made by the Class
16 Members and PAGA Members as set forth herein, Plaintiff Elfa Castro, in her individual capacity and
17 with respect to her individual claims only, agrees, in exchange for receipt of the Enhancement
18 Payment, to release the Released Parties from any and all claims, known and unknown, under federal,
19 state and/or local law, statute, ordinance, regulation, common law, or other source of law. The
20 General Release by Plaintiff Elfa Castro includes, but is not limited to, all claims arising from or
21 related to the Action or that could have been alleged in the Action. The General Release by Plaintiff
22 Elfa Castro includes all claims for unpaid wages, including but not limited to for failure to pay
23 minimum wage, straight time compensation, overtime compensation, and interest; payment for all
24 hours worked, including off-the-clock work; reimbursement for all necessary business expenses;
25 wage statements; failure to keep accurate records; liquidated damages; meal period and rest break
26 violations; unfair business practices; wage payments; penalties, including, but not limited to,
27 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
28 penalties; and attorneys' fees and expenses. The General Release by Plaintiff Elfa Castro includes all

1 such claims arising under the California Labor Code; the Wage Orders of the California Industrial
2 Welfare Commission; the California Private Attorneys' General Act; California Business and
3 Professions Code section 17200 et seq.; and the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.;
4 federal common law. The General Release by Plaintiff Elfa Castro also includes all claims for lost
5 wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs
6 arising under federal, state, or local laws for discrimination, harassment, and wrongful termination,
7 such as, by way of example only, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964,
8 the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California
9 Fair Employment and Housing Act; and the law of contract and tort. This release excludes the release
10 of claims not permitted by law.

11 The General Release by Plaintiff Elfa Castro includes all claims, whether known or unknown,
12 which, if known, might have affected her Settlement with, and release of, the Released Parties or might
13 have affected her decision not to object to this Settlement or the General Release.

14 With respect to her General Release, Plaintiff Elfa Castro stipulates and agrees that, upon the
15 execution of this Agreement, she shall be deemed to have, and by operation of the Final Judgment shall
16 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights
17 and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal
18 or state law as to the generally released claims, which provides:

19 A general release does not extend to claims which the creditor does not know or
20 suspect to exist in his or her favor at the time of executing the release, which if known
21 by him or her must have materially affected his or her Settlement with the debtor.

22 Plaintiff Elfa Castro may hereafter discover facts in addition to or different from those she
23 now knows or believes to be true with respect to the subject matter of the General Release, but upon
24 the Effective Date, she shall be deemed to have, and by operation of the Final Judgment shall have,
25 fully, finally, and forever settled and released any and all of the claims released pursuant to the
26 General Release whether known or unknown, suspected or unsuspected, contingent or non-
27 contingent, which now exist, or heretofore have existed upon any theory of law or equity.

28 74. Release of Claims by Participating Class Members. Upon the Effective Date, Plaintiff

1 and all Participating Class Members, as well as their spouses, heirs, executors, administrators,
2 trustees, and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever
3 released, settled, compromised, relinquished and discharged any and all of the Released Parties of
4 and from any and all Released Claims. As to the Released Claims only, the Participating Class
5 Members expressly waives the rights and benefits of California Civil Code § 1542. Section 1542
6 provides:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
8 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
9 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
10 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
11 **SETTLEMENT WITH THE DEBTOR.**

12 Upon the Effective Date, all Participating Class Members agree not to sue or otherwise make a
13 claim against any of the Released Parties for the Released Claims.

14 75. Release of PAGA Released Claims by PAGA Members. Upon the Effective Date,
15 Plaintiff and all PAGA Members, as well as their spouses, heirs, executors, administrators, trustees,
16 and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released,
17 settled, compromised, relinquished and discharged any and all of the Released Parties of and from any
18 and all PAGA Released Claims.

19 76. Nullification of Settlement. In the event that the Settlement does not become final for
20 any reason, then this Agreement, and any documents generated to bring it into effect, shall be null and
21 void and any order, judgment and/or dismissal entered by the Court in furtherance of this Agreement
22 shall likewise be treated as void from the beginning.

23 77. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to
24 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order: (i)
25 approving of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement Fairness
26 Hearing. The Preliminary Approval Order shall provide for the Notice Packet to be sent to all Class
27 Members and PAGA Members as specified herein. In conjunction with the Preliminary Approval
28 hearing, Plaintiff shall submit this Agreement, which sets forth the terms of this Settlement, and will

1 include the proposed Notice Packet, which shall include the proposed Notice of Class Action
2 Settlement document, attached to this Agreement as **Exhibit A**.

3 78. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
4 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's permission, a
5 Final Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the
6 Settlement along with the amounts properly payable for (i) Individual Settlement Payments and PAGA
7 Payments; (ii) the Labor and Workforce Development Agency Payment; (ii) the Class Counsel's
8 Award; (iii) the Class Representative Enhancement Payment; and (iv) all Settlement Administration
9 Costs. Class Counsel will be responsible for drafting all documents necessary to obtain Final
10 Approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application
11 to be heard at the final approval hearing.

12 79. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
13 Court or at the Final Approval/Settlement Fairness Hearing, the Parties shall present a judgment to the
14 Court for its approval in accordance with the terms of this Settlement. After entry of the judgment, the
15 Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
16 enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
17 judgment/dismissal matters as may be appropriate under court rules or as set forth in this Agreement.

18 80. Exhibits Incorporated by Reference. The terms of this Agreement include the terms set
19 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
20 Any Exhibits to this Agreement are an integral part of the Settlement.

21 81. Limited Confidentiality. 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 any
23 communication with the press about the fact, amount or terms of the Settlement. In addition, the
24 Parties and their counsel agree that they will not engage in any advertising or distribute any marketing
25 materials relating to the Settlement of this case, including but not limited to any postings on any
26 websites maintained by Class Counsel. Any communication about the Settlement to Class Members
27 prior to the Court-approved mailing of the Notice Packet will be limited to a statement that a settlement
28 has been reached and the details will be communicated in a forthcoming Court-approved Notice Packet.

1 The Parties agree to use their best efforts to schedule a hearing at which to seek Preliminary
2 Approval of the Settlement within 45 days of the date upon which the Parties executed this
3 Agreement. If it is not possible to schedule a hearing regarding Preliminary Approval within that
4 time frame, the Parties agree to schedule the hearing at the first available date thereafter.

5 82. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of
6 the Parties' Settlement and shall be binding on the Parties. No other prior or contemporaneous written
7 or oral agreements may be deemed binding on the Parties.

8 83. Amendment or Modification. This Agreement may be amended or modified only by a
9 written instrument signed by the Parties or their successors-in-interest.

10 84. Authorization to Enter into Agreement. Counsel for all Parties warrant and represent
11 they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to
12 take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
13 to effectuate its terms and to execute any other documents required to effectuate the terms of this
14 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to
15 affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or
16 content of any document needed to implement the Settlement, or on any supplemental provisions that
17 may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
18 the Court to resolve such disagreement.

19 85. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to
20 the benefit of, the successors or assigns of the Parties hereto, as previously defined.

21 86. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
22 governed by and interpreted according to the laws of the State of California.

23 87. Execution and Counterparts. This Agreement is subject only to the execution of all
24 Parties. However, the Agreement may be executed in one or more counterparts. All executed
25 counterparts and each of them, including facsimile and scanned copies of the signature page, shall be
26 deemed to be one and the same instrument provided that counsel for the Parties shall exchange among
27 themselves original signed counterparts.

28 88. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this

1 Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
2 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
3 account all relevant factors, present and potential. The Parties further acknowledge that they are each
4 represented by competent counsel and that they have had an opportunity to consult with their counsel
5 regarding the fairness and reasonableness of this Agreement.

6 89. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
7 the Court shall first attempt to construe the provision as valid to the fullest extent possible consistent
8 with applicable precedents so as to define all provisions of this Agreement valid and enforceable. Any
9 invalid, illegal, or unenforceable provision determined by the Court shall in no way affect any other
10 provision if Defendants and Class Counsel, on behalf of the Parties and the Settlement Class,
11 mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never
12 been included in this Agreement.

13 90. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
14 either Party may appeal any Court order that materially alters the Agreement's terms.

15 91. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
16 dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation.
17 In entering into this Agreement, Defendants do not admit, and specifically denies, it has violated any
18 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
19 any other applicable laws, regulations or legal requirements; breached any contract; violated or
20 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
21 conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor
22 any of the negotiations connected with it, shall be construed as an admission or concession by
23 Defendants of any such violations or failures to comply with any applicable law. Except as necessary
24 in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
25 shall not be offered or received as evidence in any action or proceeding to establish any liability or
26 admission on the part of Defendants or to establish the existence of any condition constituting a
27 violation of, or a non-compliance with, federal, state, local or other applicable law.

28 92. Captions. The captions and section numbers in this Agreement are inserted for the

1 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
2 provisions of this Agreement.

3 93. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
4 to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a
5 further waiver by such party of the same or any other condition, covenant, right or remedy.

6 94. Enforcement Actions. In the event that one or more of the Parties institutes any legal
7 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
8 or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be
9 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
10 expert witness fees incurred in connection with any enforcement actions.

11 95. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
12 conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against
13 one party than another merely by virtue of the fact that it may have been prepared by counsel for one of
14 the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
15 Parties have contributed to the preparation of this Agreement.

16 96. Representation by Counsel. The Parties acknowledge that they have been represented
17 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this
18 Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class
19 Counsel warrant and represent that there are no liens on the Agreement.

20 97. All Terms Subject to Final Court Approval. All amounts and procedures described in
21 this Agreement herein shall be subject to Preliminary and Final Approval by the Court.

22 98. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in
23 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Agreement.

25 99. Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding
27 on all Parties and agree that it shall be admissible and subject to disclosure in any proceeding to enforce
28

its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

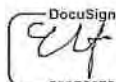
100. Interim Stay of Proceedings. The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing(s) to be conducted by the Court.

101. Waiver of Attorneys' Fees and Costs. Except as set forth in this Settlement Agreement, the Parties agree to waive any right to recover attorneys' fees and/or costs from the other.

SIGNATURES:

Elfa Castro

Dated: 12/17/2018

DocuSigned by:

539E5075855144D
Plaintiff Elfa Castro

Vienna Capital, Inc. dba Baymont Inn & Suites

Dated: _____

Please Print Name of Authorized Signatory

Dated: _____

Xiangjun Li
Defendant

APPROVED AS TO FORM

QUINTILONE & ASSOCIATES

Dated: _____

By: 
Richard E. Quintilone II
Attorneys for Plaintiff ELFA CASTRO and the Class, in
association with Class Counsel listed above

MURTAUGH TREGLIA STERN & DEILY, LLP

Dated: _____

By: _____
Matthew W. Johnson
Attorney for Defendants VIENNA CAPITAL, INC. dba
BAYMONT INN & SUITES and XIANGJUN LI

Settlement, in abeyance pending the Settlement Hearing(s) to be conducted by the Court.

101. Waiver of Attorneys' Fees and Costs. Except as set forth in this Settlement Agreement, the Parties agree to waive any right to recover attorneys' fees and/or costs from the other.

SIGNATURES:

Elfa Castro

Dated: _____

Plaintiff Elfa Castro

Vienna Capital, Inc. dba Baymont Inn & Suites

1/3/2019
Dated: _____

 Jonathan Eid
Please Print Name of Authorized Signatory

1/3/2019
Dated: _____


Xiangjun Li, Defendant

APPROVED AS TO FORM

QUINTILONE & ASSOCIATES

Dated: _____

By: _____
Richard E. Quintilone II
Attorneys for Plaintiff ELFA CASTRO and the Class, in
association with Class Counsel listed above
MURTAUGH TREGLIA STERN & DEILY, LLP

11/2/19
Dated: _____

By: 
Matthew W. Johnson
Attorney for Defendants VIENNA CAPITAL, INC. dba
BAYMONT INN & SUITES and XIANGJUN LI