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Attorneys for Defendants 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

**AMENDMENT TO CLASS ACTION
SETTLEMENT**

Date: May 2, 2019

Time: 2:00 p.m.

Dept: CX-102

Complaint filed: March 10, 2016

First Amended Complaint: May 3, 2016

Additional Plaintiff's Counsel

MARC H. PHELPS (SBN 237036)

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AMENDED PARAGRAPHS TO BE INCORPORATED IN CLASS ACTION 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

1 which are premised on alleged violations of the Labor Code; (3) the PAGA Released Claims; (4) the
2 Wage Orders of the California Industrial Welfare Commission; and (4) the Fair Labor Standards Act,
3 29 U.S.C. §§201 et seq., by not opting out as described in paragraph 59, expressly release their claims
4 under the Fair Labor Standards Act.

5 32. “**Settlement Administration Costs**” means the costs payable from the Class Settlement
6 Amount to the Settlement Administrator for administering this Settlement, including, but not limited
7 to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the
8 Class Settlement Amount, and providing necessary reports and declarations, as requested by the
9 Parties. The Settlement Administration Costs shall be paid from the Class Settlement Amount,
10 including, if necessary, any such costs in excess of the amount represented by the Settlement
11 Administrator as being the maximum costs necessary to administer the Settlement. The Settlement
12 Administration Costs to be paid from the Class Settlement Amount are currently estimated to be Ten
13 Thousand Dollars and Zero Cents (**\$10,000.00**). Settlement Administrations Costs not to exceed
14 **\$10,000.00**, such excess amount shall be paid exclusively from the Class Settlement Amount.

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

24 48. Settlement Administration Costs. The Settlement Administrator shall be paid for
25 the reasonable costs of administration of the Settlement and distribution of payments from the
26 Class Settlement Amount, which are not to exceed at Ten Thousand Dollars and Zero Cents
27 (**\$10,000.00**). The Settlement Administration Costs, which shall be paid from the Class
28 Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual

Settlement Payments, if any, the issuing of 1099 IRS Forms, distributing the Notice Packet, calculating and distributing the Class Settlement Amount and Class Counsel's Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not approved by the Court shall be added to the Net Settlement Amount for distribution to the Participating Class Members.

51(b). The Individual Settlement Payments will be reduced by any required legal deductions for each Class Member. All standard employee payroll deductions will be made for state and federal withholding taxes as well as any other applicable payroll deductions owed by the Participating Class Members as a result of the Wage Component (See ¶65 below). The Settlement Administrator will issue a check and W-2 Form to each Class member for the wage component (i.e. the 33.33% of each Individual Settlement Payment allocated as wages).

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

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 State Controller's Unclaimed Property Fund, to be held in trust for each Class Member. In such event, those Class Members will nevertheless remain bound by the Settlement.

68. Treatment of Individual Settlement Payments. All Individual Settlement Payments, excluding the PAGA Payment, 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.

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

78. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the Settlement along with the amounts properly payable for (i) Individual Settlement Payments and PAGA Payments; (ii) the Labor and Workforce Development Agency Payment; (ii) the Class Counsel's Award; (iii) the Class Representative Enhancement Payment; and (iv) all Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval, including a declaration by the Class Representative in support of the enhancement payment. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing including records in support of fees and costs at final approval. Plaintiff shall present a full report to the Court on all exclusions and objections received. The Court will consider any objections at the final approval hearing. Settlement Administrator shall provide an estimated high and low for individual settlement payments, along with the information regarding the individual payouts.

SIGNATURES:

Elfa Castro

Dated: _____

Plaintiff Elfa Castro

Vienna Capital, Inc. dba Baymont Inn & Suites

4/29/2019
Dated: _____

Xiangjun Li
Please Print Name of Authorized Signatory

4/29/2019
Dated: _____

Xiangjun Li
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

SIGNATURES:

Elfa Castro

Dated: 4/22/2019

DocuSigned by:

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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: 4/22/2019

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

SIGNATURES:

Elfa Castro

Dated: _____

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 ONLY****

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: 4-22-19

By: 

Madelyn A. Enright
Matthew W. Johnson
Attorney for Defendants VIENNA CAPITAL, INC. dba
BAYMONT INN & SUITES and XIANGJUN LI

**** APPROVED AS TO FORM ONLY ****