

SETTLEMENT AGREEMENT AND RELEASE OF PRIVATE ATTORNEYS
GENERAL ACT CLAIM

This Settlement Agreement and Release of the Private Attorneys General Act Claim (“Settlement Agreement”) is made by and between, on the one hand, Gregory Olivas (“Plaintiff”), on behalf of himself and all “aggrieved employees,” and on the other hand, Defendant Fairmont Hospitality, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

A. Definitions

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” or “Lawsuit” means and refers to *Gregory Olivas, et al. v. Fairmont Hospitality, Inc., et al.*, San Bernardino County Superior Court Case No. CIVSB2225073. The operative complaint in the Action is the Representative Action Complaint filed on November 4, 2022.
2. “Active Date” means the latest of: (i) the Effective Date, if no objection is made or filed to the Settlement Agreement; (ii) if an objection is made or filed, but no appeal is filed, the expiration of the deadline for any appeals; and (iii) if an objection is made or filed, and an appeal is filed, the date that an appeal is resolved resulting in a court order approving this Settlement Agreement.
3. “Agreement” or “Settlement Agreement,” shall mean this Settlement Agreement and Release of the Private Attorneys General Act Claim, together with all attached Exhibits.
4. “Attorney’s Fees and Costs” means the sum for which Plaintiff’s Counsel shall make application to the Court, that shall not exceed 35% of the Gross Settlement Amount (\$26,250), and actual litigation costs, not to exceed \$10,000, which shall be paid out of the Gross Settlement Amount.
5. “Court” shall mean the Superior Court of the State of California, County of San Bernardino.
6. “Defendant’s Counsel” means and refers to Bhakta Law Firm, APC.
7. “Effective Date” means the date the Court approves the terms of the Settlement set forth in this Agreement and has entered the Final Order and Judgment.
8. “Eligible Pay Period” means any pay period worked by a PAGA Member in California for Defendant as a non-exempt, hourly employee, at any time during the PAGA Period. Defendant represents there are approximately 1,315 Eligible Pay Periods worked by PAGA Members during the PAGA Period. If the total number of Eligible Pay Periods worked during the PAGA Period exceeds 1,446 pay periods (e.g., 10% more than represented), the Gross Settlement Amount will increase pro rata based on the number in excess of 1,446 pay periods worked during the PAGA Period (the “Escalator Payment”).
9. “Final Order and Judgment” means the Court’s Order granting the Stipulation and Order Approving the PAGA Settlement (or Motion for Approval of the PAGA Settlement, if required) set forth in this Agreement, entering Judgment, and dismissing the Action with prejudice.
10. “Funding Date” means thirty (30) calendar days after the Active Date.

11. “Gross Settlement Amount” or “GSA” means the maximum settlement amount that Defendant will pay in connection with the Settlement of the Action. The GSA is Seventy-Five Thousand Dollars (\$75,000), subject to the Escalator Payment memorialized in Paragraph 8, above. No part of the GSA shall revert to Defendant under any circumstances. Defendant shall pay no more and no less than the GSA to resolve the Action as described herein.

12. “LWDA Payment” means seventy-five percent (75%) of the PAGA Penalty Fund that shall be paid to the California Labor & Workforce Development Agency (“LWDA”) pursuant to the PAGA for civil penalties.

13. “Net Settlement Amount” or “PAGA Penalty Fund” is the amount that remains after deduction of Plaintiff Counsel’s Attorney’s Fees and Costs, Plaintiff’s Service Award Payment, and the Settlement Administrator’s fees and costs from the Gross Settlement Amount.

14. “Notice” means the written notice to be mailed to all PAGA Members with their settlement payment checks, once the Court enters its Final Order and Judgment, and the Active Date occurs, in a form substantially similar to **Exhibit A**, and as approved by the Court.

15. “PAGA Member(s)” means all current and former non-exempt, hourly employees of Defendant who worked at least one shift in California during the PAGA Period.

16. “PAGA Period” or “Statutory Period” means the time period from August 29, 2021 to the date of Court approval of this settlement, or January 11, 2024, whichever occurs first.

17. “PAGA Settlement” or “Settlement” means the settlement of the Action memorialized in this Agreement.

18. “Plaintiff’s Counsel” means Daniel F. Gaines of Gaines & Gaines, APLC.

19. “Plaintiff’s Service Award Payment” means and refers to the individual settlement payment to Plaintiff in the amount of up to Fifteen Thousand Dollars (\$15,000) as consideration for Plaintiff’s execution of this Agreement and his full general release of all claims as to the Released Parties.

20. “Released Parties” means Defendant, and its present and former parents, subsidiaries, co-employers, and each of their respective present and former owners, boards, directors, officers, trustees, shareholders, members, partners, employees, agents, attorneys, representatives, successors and assigns, and present and former parents, subsidiaries, affiliated and related parties, and each of them.

21. “Settlement Administrator” means Phoenix Class Action Administration Solutions, or a different third-party administrator agreed to by the Parties and approved by the Court.

B. General

22. On or about August 29, 2022, Plaintiff sent a PAGA Notice to the LWDA, with a copy to Defendant via U.S. Certified Mail, alleging the following claims against Defendant: (1) failure to pay minimum and overtime wages due (rounding); (2) failure to pay minimum and overtime wages due (off-the-clock work); (3) failure to provide rest periods; (4) failure to provide meal periods; (5) failure to reimburse business expenses (personal cell phones and vehicles); (6) failure to provide accurate itemized wage statements; and (7) waiting time penalties.

23. Without indication from the LWDA it intended to investigate the claims, on November 4, 2022, Plaintiff filed the Action in the Superior Court of California, County of San Bernardino, which alleged the claims identified in Plaintiff's PAGA Notice.

24. Defendant denies all of Plaintiff's claims and allegations, as referenced in the Action and the PAGA Notice, and further denies any liability or wrongdoing of any kind associated with the claims alleged in the Action (or otherwise). Defendant enters into this Agreement primarily to avoid the costs and uncertainties involved with continued litigation, as well as the disruption to its business operations.

25. The Parties have conducted a thorough investigation into the facts of the Action. This included, among other things, informal discovery and exchanging extensive information and key documents relating to the underlying alleged violations. After engaging in private mediation with Hon. Keith D. Davis (Ret.) on September 11, 2023, the Parties reached the proposed Settlement described in this Agreement, and believe it is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree this Agreement constitutes a compromise of claims alleged by Plaintiff on behalf of the State of California and the LWDA, and it is the desire and intention of the Parties to effect a final and complete resolution of the representative claims Plaintiff has alleged against Defendant and/or any of the Released Parties. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by Defendant.

26. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. Labor Code §§ 2698, *et seq.* Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as is the case here, or does investigate and determines a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees." *Id.*

27. California Labor Code § 2699(1)(2) provides "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part."

28. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement

29. Subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement of the Action.

30. Upon the Court entering the Final Order and Judgment and the Active Date occurring, Defendant shall pay the non-reversionary Gross Settlement Amount of Seventy-Five Thousand Dollars (\$75,000), subject to the Escalator Payment memorialized in Paragraph 8, above. The Gross Settlement Amount will be distributed in the following manner:

- a. **Settlement Administration Costs:** The costs associated with settlement administration will be paid from the Gross Settlement Amount, and shall not exceed \$3,000. The Administrator's services will include, but not be limited to the following: updating PAGA Members' mailing addresses through a search of the National Change of Address database maintained by the U.S. Post Office, and skip-tracing bad addresses on the return of the PAGA Members' Notice and settlement payment checks; formatting and printing the Notice to be mailed to the PAGA Member with their settlement payment checks; calculating, issuing and mailing payments to LWDA and PAGA Members; performing tax reporting to the appropriate authorities, among other things called for by this Agreement. Subject to Court approval, the Parties agree to use Phoenix Class Action Administration Solutions as the Settlement Administrator.
- b. **Attorney's Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to 35% of the GSA (\$26,250) from the GSA, as reasonable attorney's fees, plus actual litigation costs of up to \$10,000, also to be paid from the GSA, incurred to litigate the Action and to obtain Court approval of the Settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff's Counsel for the Attorney's Fees and Costs awarded. In no circumstance(s) shall Defendant be liable for any payment(s) of Attorney's Fees and Costs separate from the GSA.
- c. **Plaintiff's Service Award Payment:** The Parties agree that, subject to the Court's review and approval, Plaintiff will be paid up to Fifteen Thousand Dollars (\$15,000), which is Plaintiff's Service Award Payment. The appropriate tax documents shall be provided to Plaintiff.
- d. **PAGA Penalty Fund:** After deducting the Attorney's Fees and Costs, Plaintiff's Service Award Payment, and Settlement Administration Costs from the Gross Settlement Amount, the remaining net settlement amount, the PAGA Penalty Fund, will be apportioned as required by the PAGA, Labor Code section 2699(i), with distribution of 75% to the LWDA, (the "LWDA Payment") and 25% to the PAGA Members. The PAGA Penalty Fund shall encompass all payments to the LWDA and to the PAGA Members.
- e. **PAGA Penalty Fund Allocation:** The PAGA Penalty Fund, estimated at \$20,750 shall be allocated \$15,562.50 (75%) for the LWDA Payment, and \$5,187.50 (25%) to the PAGA Members, to be distributed on a proportionate basis, using the number of Eligible Pay Periods each PAGA Member worked during the PAGA Period, as detailed in Paragraph 38, herein.
- f. **Taxes and Reporting:** Each PAGA Member's individual share will be treated as non-wage income for which the Administrator shall issue an IRS Form 1099 to be mailed together with the PAGA Member's settlement check, and reported to the applicable governmental authorities, if required by law as determined by the Settlement Administrator.

D. Release as to the PAGA Representative Claims

31. Upon approval by the Court of this Settlement, and subject to Defendant's payment

of the GSA, Plaintiff, individually and in his representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims for penalties arising under the Private Attorneys General Act of 2004 that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in the Lawsuit, including, but not limited to, claims pursuant to Labor Code sections, 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 2699, and 2802, and any and all other civil penalties, attorneys' fees, and/or costs under the Private Attorneys General Act of 2004, within the PAGA Period (the "Released PAGA Claims").

32. The Final Order and Judgment shall not bind or release the PAGA Members' individual wage claims (or other individual claims). However, in accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Final Order and Judgment shall be binding on the PAGA Members as to the Released PAGA Claims. A statement to this effect shall be included in the Notice sent to the PAGA Members mailed together with their Settlement payment checks and IRS 1099 Forms.

E. General Release as to Plaintiff's Claims

- a. **Complete and General Release:** In exchange for the consideration, promises and covenants contained in this Agreement, and subject to Defendant's full payment of the GSA as provided herein, Plaintiff, on behalf of himself and his agents, representatives, attorneys, spouses, heirs, executors, administrators, successors and assigns, now or hereafter, hereby releases, waives and forever discharges Defendant and the Released Parties, from any and all claims, liabilities, causes of action, charges, complaints, obligations, costs, losses, damages, injuries, attorneys' fees, and other legal responsibilities, of any form whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected, or latent, which Plaintiff or his heirs, administrators, executors, successors in interest, and/or assigns have incurred or expect to incur, or now own or hold, or have at any time heretofore owned or held, or may at any time own, hold, or claim to hold by reason of any matter or thing arising from any cause whatsoever prior to the date of Plaintiff's execution of this Agreement related in any way to his employment with Defendant or separation thereof from Defendant ("Plaintiff's General Release").

The scope of Plaintiff's General Release extends to claims including, but not limited to, any alleged (a) violation of the National Labor Relations Act, Title VII of the Civil Rights Act, the California Fair Employment and Housing Act, the Americans With Disabilities Act of 1990, the Fair Labor Standards Act, the California Labor Code, any applicable California Wage Order, the California Private Attorneys General Act (to include but not limited to, acting as a PAGA representative), the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the California Family Rights Act, the Employee Retirement Income Security Act (excluding vested benefits), the California Unfair Business Practices Act/Unfair Competition Law, the Family and Medical Leave Act, the California Family Rights Act, the Worker Adjustment and Retraining Notification Act, and any state law equivalent; (b) harassment, discrimination, and/or retaliation on the basis of age, race, color, ancestry, national origin (including language use restrictions), citizenship, religious creed (including religious dress and grooming practices), sex marital status, domestic partnership status, sexual orientation, gender, gender identity or gender expression, veteran status, military status, political affiliation, family care or medical leave status or the denial of family

and medical care leave, physical or mental disability (including HIV and AIDS), medical condition (including cancer and genetic characteristics), genetic information or any other basis protected by applicable federal, state and/or local laws, regulations, rules, ordinances and/or orders, failure to prevent harassment, discrimination, and/or retaliation, failure to accommodate, failure to engage in the interactive process, retaliation; (c) any whistleblower or retaliation claims on the basis of any protected activity or other protected basis; (d) breach of any express or implied promise, contract or agreement (express or implied), or breach of the implied covenant of good faith and fair dealing; (e) any tort or common law claims, including wrongful discharge, intentional or negligent infliction of emotional distress, negligence, fraud, misrepresentation, defamation, interference with prospective economic advantage, or other tort or common law actions; (f) claims for misclassification, wage and hour, or other claims related to hours, conditions, or compensation related to work; and (g) any other violation of local, state, or federal law, constitution, statute, regulation or ordinance, public policy, contract, or tort or common law claim, whether for legal or equitable relief, having any bearing whatsoever on the terms and conditions of employment, or association or working relationship, with any of the Released Parties, including but not limited to any allegations for penalties, interest, costs and fees, including attorneys' fees, incurred in any of these matters, which Plaintiff ever had, now has, or may have prior to the date of Plaintiff's execution of this Agreement. All such claims, liabilities or causes of action (including, without limitation, claims for related attorneys' fees and costs) are forever barred by this Agreement regardless of the forum in which they may be brought. The Parties intend for Plaintiff's General Release to be as broad as possible.

Plaintiff represents and acknowledges that the Service Award contained in the Agreement shall constitute the entire consideration provided to Plaintiff and Plaintiff will not seek any further compensation for any claim, damage, cost, or attorney's fees in connection with the matters encompassed in the Agreement. Plaintiff represents and acknowledges that the Service Award contained in the Agreement constitutes a full satisfaction and accord of any claims Plaintiff has or may have against any of the Released Parties. Plaintiff acknowledges the Payment constitutes ample consideration, the sufficiency of which is hereby acknowledged, for Plaintiff's promises in the Agreement.

- b. **Section 1542 Waiver:** Plaintiff stipulates and agrees that he expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff may hereafter discover facts in addition to or different from those he now knows or believes to be true with respect to the subject matter of the Release, but Plaintiff upon the Active Date shall fully, finally, and forever settle and release any and all of the claims released pursuant to Plaintiff's General Release, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now

exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

- c. **Non-Waivable Rights:** Plaintiff's General Release does not apply to any claims that cannot be released as a matter of law. The provisions of this Section E(c) also do not preclude filing a charge or complaint with or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission ("EEOC"), the National Labor Relations Board ("NLRB"), the Occupational Safety and Health Administration ("OSHA"), or any other federal, state, or local agency charged with the enforcement of any employment laws, although Plaintiff understands that by signing this Agreement, he waives the right to recover any damages or to receive other relief directly from the Released Parties in any claim or suit brought by or through the EEOC, NLRB, OSHA or any other federal, state, or local agency on his behalf.

F. Settlement Approval and Implemental Procedures

33. Plaintiff's Counsel shall prepare a stipulation for approval of the Settlement (or motion, if required) pursuant to California Labor Code § 2699(1)(2). Defendant shall not oppose such a motion or stipulation. Defendant's Counsel will work with Plaintiff's Counsel to provide Plaintiff's Counsel with, and allow Plaintiff's Counsel to submit to the Court, adequate information related to the Released PAGA Claims to obtain approval of the Settlement pursuant to a reasonable request by Plaintiff's Counsel. As required by Labor Code, at the time the motion or stipulation for approval of the Settlement is filed with the Court, Plaintiff's Counsel shall submit the motion or stipulation, together with its exhibits, to the LWDA.

34. Within three (3) business days after the Effective Date, the Settlement Administrator shall send Defendant's Counsel electronic wiring instructions to fund the Gross Settlement Amount.

35. No later than the Funding Date, Defendant will send to the Settlement Administrator a list which shall provide for each PAGA Member, the following information: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods (the "Data List"). The fact that Defendant may not possess/maintain/know any or all of the PAGA Members' contact information shall not constitute a breach of this Agreement or be grounds for enforcement; however, Defendant will conduct a reasonable search and diligent inquiry to obtain such information and provide to the Settlement Administrator. The Data List shall be treated as and remain confidential and be used solely to manage the notice and payment process described herein, and for no other purpose, and shall not be disclosed to anyone other than the Settlement Administrator, except as may be required by applicable taxing authorities, or pursuant to express written authorization of Defendant, the PAGA Members or by order of the Court.

36. No later than the Funding Date, Defendant shall wire the Gross Settlement Amount, i.e., \$75,000 to the Settlement Administrator. Upon receipt of payment from Defendant, the Administrator will distribute the Gross Settlement Amount as ordered by the Court. If an additional payment is required to fund the GSA pursuant to the of the Escalator Payment clause memorialized in Paragraph 8, above, Defendant shall fund that payment no later than ten (10) calendar days after the Settlement administrator confirms the additional amount due. The Gross Settlement Amount must be fully funded prior to any disbursements being made. Should Defendant fail to fund the

Gross Settlement Amount at the time and in the amounts as provided for by this Agreement, and unless otherwise agreed upon by the Parties or ordered by the Court, Plaintiff may elect to enforce this Agreement or, at his option, this Agreement and the settlement described within it, shall be rescinded, and the Parties shall be restored to their respective positions as of September 11, 2023.

37. The Settlement Administrator will perform all settlement administration duties, including (i) a National Change of Address (“NCOA”) database search; (ii) skip trace to update PAGA Members’ addresses on the return of undelivered Notices and checks; (iii) issuing the Notice and payments to all PAGA Members; (iv) issuing all required IRS forms, and reporting same to the applicable taxing authorities; and (v) issuing payment to the LWDA, PAGA Members, Plaintiff’s Counsel and to itself.

38. The Administrator shall have the authority and obligation to calculate the amounts of the PAGA Members’ Settlement payments in accordance with the methodology set forth in this Agreement and orders of the Court. Each PAGA Member will be eligible to receive a Settlement payment based on the total number of his/her Eligible Pay Periods worked during the PAGA Period in relation to the aggregate number of Eligible Pay Periods worked by all PAGA Members during the PAGA Period, e.g.

$$\text{PAGA Member Payment} = \$5,187.50 \times \frac{\text{PAGA Member's Number of Eligible Pay Periods}}{\text{All PAGA Members' Eligible Pay Periods}}$$

39. All disbursements to the PAGA Members, the LWDA, the Settlement Administrator, and Plaintiff’s Counsel required under this Settlement Agreement shall be made within ten (10) business days after Defendant fully funds the GSA. Prior to disbursement, the Settlement Administrator will forward its calculations of the PAGA Members’ Settlement payments to all counsel, and receive approval from all counsel as to such amounts. Any Party’s failure to respond to the Settlement Administrator’s request for approval within five (5) business days shall be deemed approval of the calculations.

40. PAGA Members shall have 180 calendar days after mailing to cash their individual settlement checks. If any PAGA Member’s check is not cashed within that period, the check will be voided and a stop-payment will be issued. Any funds in the Settlement Administrator’s account as a result of a failure to timely cash a settlement check shall be transmitted to the California State Controller’s Unclaimed Property Fund in the name of each respective PAGA Member whose check was uncashed and voided. Neither Defendant, Defendant’s Counsel, Plaintiff’s Counsel, nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Settlement will be paid out to PAGA Members whether or not they all cash their settlement checks. Therefore, Defendant will not be required to pay any interest on said amount. In no circumstance(s) shall Defendant be liable for any interest payment(s).

41. By no later than 240 days after mailing Settlement payment checks to all PAGA Members, the Settlement Administrator shall provide Plaintiff’s Counsel and Defendant’s Counsel with a declaration setting forth the disbursements made to the PAGA Members, the LWDA, Plaintiff’s Attorneys for attorneys’ fees and litigation costs, and to itself, and shall include information regarding the number of uncashed checks as of that date, the aggregate sum of uncashed checks, and the timeline for transmittal of sum represented by all uncashed checks to California’s Controller, Unclaimed Property Division (if applicable).

G. Miscellaneous Provisions

42. **Eligible Workweeks:** Defendant has represented there are approximately 1,315 Eligible Pay Periods worked by the PAGA Members during the PAGA Period.

43. **Voiding the Agreement:** The Settlement Agreement shall be voidable and unenforceable as to all Parties herein at the option of either Party if (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment, or (c) the approval of the Settlement is reversed, modified or declared or rendered void by a court of competent jurisdiction. In that event, then neither the Settlement nor any of the related negotiations or proceedings shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

44. **Waiver:** The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

45. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

46. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the Settlement, and the Final Order and Judgment.

47. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

48. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the PAGA Members in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action based on the facts set forth in the Representative Action Complaint. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

49. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

50. **Enforcement Actions:** This Agreement is binding and enforceable under California Code of Civil Procedure section 664.6, and the Court shall retain jurisdiction to enforce this Agreement. Except as otherwise provided in this Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any action or proceeding in this case under Section 664.6 or otherwise or separate legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs incurred in connection with any enforcement actions.

51. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Daniel F. Gaines
Gaines & Gaines, APLC
4550 E Thousand Oaks Blvd, Suite 100
Westlake Village, CA 91362

To Defendant:

Ankit H. Bhakta
Bhakta Law Firm, A Professional Corporation
3175 Sedona Ct., Bldg E, Suite 12
Ontario, California 91764

52. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or their or its counsel participated in the drafting of this Settlement Agreement.

53. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

54. **Modification:** This Settlement Agreement may not be materially changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. Non-

material changes requested by the Court may be made upon stipulation signed by all counsel. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

55. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

56. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

57. **Continuing Jurisdiction:** After entry of the Final Order and Judgment, the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6 and as otherwise allowed by law solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters; and (iii) such post-Final Order and Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

58. **Waiver of Appeals:** The Parties waive all appeals from the Court's approval of the Agreement, unless the Court materially modifies the Agreement and/or unless a non-Party files an appeal.

59. **Publicity:** With respect to the Settlement, Plaintiff, Defendant, Defendant's Counsel, and Plaintiff's Counsel agree not to publicize, contact the media, or disclose to the public any information about the Settlement or the negotiation process, with the exception of filing this Settlement Agreement with the Court, and submitting it to the LWDA, informing the Court of the manner in which the Settlement was obtained, and the reasons in support of the fairness of the Settlement only insofar as necessary to obtain Court approval of the settlement of the Action. Plaintiff's Counsel may also respond to inquiries by PAGA Members and the LWDA. With respect to the terms of this Settlement, Plaintiff's Counsel agrees not to post the terms of the Settlement on their website or initiate contact with the media about its terms or the negotiations. If asked by the media, Plaintiff's Counsel and Plaintiff agree to state, "The matter was amicably settled. Any further information about the settlement may be obtained by going to the Court's website." Plaintiff's Counsel agrees that they will not circumvent this Agreement by facilitating or encouraging any PAGA Group member or any other individual to do what Plaintiff and his counsel have agreed not to do.

60. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

61. **Counterparts:** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

62. **Severability:** Any provision in this Agreement which is illegal, invalid, or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such

illegality, invalidity, or unenforceability without invalidating the remaining provisions hereof or affecting the legality, validity, or enforceability of such provision in any other jurisdiction. The Parties hereto agree to negotiate in good faith to replace any illegal, invalid, or unenforceable provision of this Agreement with a legal, valid and enforceable provision that, to the extent possible, will preserve the economic bargain of this Agreement, or otherwise to amend this Agreement, including the provision relating to choice of law, to achieve such result.

63. **Confidentiality**: Plaintiff and his counsel agree that the terms and existence of this Agreement shall be kept confidential and that they shall not disclose the same to any other person or entity, except (i) in legal proceedings to enforce performance of any Party's obligations hereunder, (ii) where required by law, or (iii) to the their immediate family members or legal or financial advisors, each of whom shall be deemed agents of the disclosing Party and similarly charged with a duty of confidentiality prior to any disclosure. Plaintiff and his counsel may also discuss the settlement with PAGA Members (upon inquiry), the Court, and the LWDA, but agree not to publish any of the terms or conditions of this settlement.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of the Private Attorneys General Act Claim as of the date set forth below.

Dated: 10 / 26 / 2023

By: 
Plaintiff, Gregory Olivas

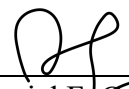
Dated: _____

By: _____
Defendant, Fairmont Hospitality, Inc.

AS TO FORM:

Gaines & Gaines, APLC

Dated: October 26, 2023

By: 
Daniel F. Gaines
Attorneys for Plaintiff

Bhakta Law Firm, A Professional Corporation

Dated: _____

By: _____
Ankit H. Bhakta
Attorneys for Defendant

illegality, invalidity, or unenforceability without invalidating the remaining provisions hereof or affecting the legality, validity, or enforceability of such provision in any other jurisdiction. The Parties hereto agree to negotiate in good faith to replace any illegal, invalid, or unenforceable provision of this Agreement with a legal, valid and enforceable provision that, to the extent possible, will preserve the economic bargain of this Agreement, or otherwise to amend this Agreement, including the provision relating to choice of law, to achieve such result.

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IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Settlement Agreement and Release of the Private Attorneys General Act Claim as of the date set forth below.

Dated: _____

By: _____

Plaintiff, Gregory Olivas

Dated: 10/25/23

By: [Signature]

Defendant, Fairmont Hospitality, Inc.

AS TO FORM:

Gaines & Gaines, APLC

Dated: _____

By: _____

Daniel F. Gaines

Attorneys for Plaintiff

Bhakta Law Firm, A Professional Corporation

Dated: 10/26/23

By: [Signature]

Ankit H. Bhakta

Attorneys for Defendant

EXHIBIT A

«DATE»

«FIRST_NAME» «LAST_NAME»
«ADDRESS 1»
«ADDRESS 2»

Re: Settlement Payment from *Gregory Olivas, et al. v. Fairmont Hospitality, Inc., et al.*

Dear «FIRST_NAME» «LAST_NAME»

By order of the San Bernardino County Superior Court, enclosed is your payment from the settlement of the *Gregory Olivas, et al. v. Fairmont Hospitality, Inc., et al.*, litigation filed in the San Bernardino County Superior Court, Case No. CIVSB2225073 (the “Lawsuit”).

The Lawsuit was filed against Fairmont Hospitality, Inc. (referred to as “Defendant”) under the California Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698, *et seq.* (abbreviated “PAGA”) for alleged violations of the California Labor Code. The claim was brought by Gregory Olivas on behalf of the State of California and all current and former non-exempt, hourly employees who worked for Defendant in California at any time from August 29, 2021 through [REDACTED] (“PAGA Members”). You have been identified as a PAGA Member, on whose behalf the case was brought.

The plaintiff in the Lawsuit claimed Defendant owed civil penalties under PAGA for violating certain provisions of the California Labor Code. The provisions of the California Labor Code that were alleged to have been violated are: (1) failure to pay minimum and overtime wages due (rounding); (2) failure to pay minimum and overtime wages due (off-the-clock work); (3) failure to provide rest periods; (4) failure to provide meal periods; (5) failure to reimburse business expenses (personal cell phones and vehicles); (6) failure to provide accurate itemized wage statements; and (7) waiting time penalties.

Defendant vigorously denies it did anything wrong or owes any PAGA penalties to the State of California or to PAGA Members. However, rather than paying attorneys and incurring legal fees to fight the case, it has agreed to this Settlement to end the Lawsuit and avoid any further disruption to its business operations.

The San Bernardino County Superior Court has not ruled on the merits of the Lawsuit but it has approved the settlement between the Parties, including the civil penalties settlement amount to be paid by Defendant. Pursuant to California law, a portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency (“LWDA”). Another portion of the settlement amount goes to the PAGA Members. In agreeing to this settlement, Defendant does not admit that it is liable in any way to any individuals for the alleged violations. The settlement of this Lawsuit and Final Approval Order does not in any way release a PAGA Member’s individual claims, to the extent a PAGA Member may have any individual claims.

You are receiving this payment as your share of the settlement. You have 180 days to cash the settlement check. If you do not cash your check by this date, the money will be transferred to the State of California Unclaimed Property Fund, from which you may recover the money at a future time. You will receive an IRS Form 1099 form for the amount of your settlement check, if required by law. If you have lost or misplaced your settlement check, you should contact the Administrator at the toll-free number shown at the top of this letter. It is strongly recommended that all checks be cashed immediately upon receipt. Defendant will not in any manner retaliate against any individual who cashes their settlement check.

You are not a party to the Lawsuit, but you and the State of California will be bound by the order in this matter approving the settlement in the Lawsuit, as well as to the release of claims in this Lawsuit, stated below, only as to civil penalties under PAGA.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon approval by the Court of this Settlement, and subject to Defendant's payment of the GSA, Plaintiff, individually and in his representative capacity on behalf the State of California and the PAGA Members, will fully and finally release and discharge the Released Parties from all claims for penalties arising under the Private Attorneys General Act of 2004 that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in the Lawsuit, including, but not limited to, claims pursuant to Labor Code sections, 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 2699, and 2802, and any and all other civil penalties, attorneys' fees, and/or costs under the Private Attorneys General Act of 2004, within the PAGA Period (the "Released PAGA Claims").

The "Released Parties" are Defendant, and its present and former parents, subsidiaries, co-employers, and each of their respective present and former owners, boards, directors, officers, trustees, shareholders, members, partners, employees, agents, attorneys, representatives, successors and assigns, and present and former parents, subsidiaries, affiliated and related parties, and each of them.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter) or Plaintiff's Counsel as follows:

Attorneys for Plaintiff:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Evan S. Gaines, Esq.
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (866) 550-0855

**PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH ANY
QUESTIONS ABOUT THE LAWSUIT OR THE SETTLEMENT**