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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF**

ELIZABETH POPOWSKI, an individual, on
behalf of herself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

HDHCA LLC, a California Limited Liability
Corporation; and DOES 1 TO 50,

Defendants.

Case No.:

**Settlement Agreement and Release of Class
Action**

O'HAGAN MEYER

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SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Elizabeth Popowski (“Plaintiff”), individually and in her representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; **(2)** Defendants HDHCA LLC and S & K Inns of America, Inc. (collectively “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

ACTION

“Action” shall mean the following civil action: *Elizabeth Popowski v. HDHCA LLC*, case number , currently pending before the Superior Court of the State of California for the County of .

ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$5,250.00.

APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 5-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11050.)

1 **CLAIMS**

2 “Claims” shall mean the claims asserted in the Action.

3 **CLASS ATTORNEY FEES AND EXPENSES**

4 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class
6 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$46,666.67),
7 as approved by the Court, and the award of costs and expenses shall be up to an additional \$15,000.00.
8 If the Escalator Provision described below is triggered so as to increase the Gross Settlement Amount,
9 the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase
10 proportionally such that the total amount of attorneys’ fees remains one-third of the Gross Settlement
11 Amount *after* the upward adjustment required by the Escalator Provision is implemented.

12 **CLASS COUNSEL**

13 “Class Counsel” shall mean Megan E. Ross and Hannah Becker of Melmed Law Group P.C.

14 **CLASS MEMBER**

15 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
16 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
17 in-interest.

18 **CLASS NOTICE**

19 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
20 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
21 Class Members along with the Share Form.

22 **CLASS PARTICIPANTS**

23 “Class Participants” shall mean all Class Members who do not timely request exclusion from
24 the Class Settlement.

25 **CLASS PERIOD**

26 “Class Period” shall mean the period from October 19, 2018, through the earlier of: October
27 31, 2023 or the date of preliminary approval of the settlement.

1 **CLASS REPRESENTATIVE**

2 “Class Representative” shall mean Plaintiff Elizabeth Popowski.

3 **CLASS SETTLEMENT**

4 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
5 subject to Court approval.

6 **COMPLAINT**

7 “Complaint” shall mean the currently-operative complaint in the Action.

8 **COURT**

9 “Court” shall mean the Superior Court of the State of California for the County of .

10 **DEFENDANTS**

11 “Defendants” shall mean Defendant HDHCA LLC and Defendant S & K Inns of America, Inc.

12 **DEFENSE COUNSEL**

13 “Defense Counsel” shall mean the attorneys representing Defendants.

14 **EFFECTIVE DATE**

15 “Effective Date” shall be the date when all of the following events have occurred: **(a)** this
16 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
17 **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the
18 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
19 **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
20 certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the
21 following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate
22 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
23 proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding
24 opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal,
25 writ, or the issuance of such other final appellate order upholding the Court’s final order with no right
26 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
27 Settlement shall not become effective until the Court’s order approving the Class Settlement is
28 completely final and there is no further recourse by an appellant or objector who seeks to contest the

1 Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are
2 completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement
3 Class and approving this Settlement Agreement).

4 **EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

5 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all
6 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
7 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State
8 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement
9 Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld
10 from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

11 **EMPLOYER'S TAXES**

12 "Employer's Taxes" shall mean and refer to Defendants' share of payroll taxes (e.g.,
13 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
14 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
15 The Employer's Taxes shall be separately paid by Defendants and shall not be paid from the Gross
16 Settlement Amount or Net Settlement Amount.

17 **FINAL APPROVAL AND FAIRNESS HEARING**

18 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the
19 fairness, reasonableness, and adequacy of the Class Settlement.

20 **GROSS SETTLEMENT AMOUNT**

21 "Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling
22 \$140,000.00 to be paid by Defendants in full settlement of the Released Claims asserted in this case,
23 inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class
24 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendants shall separately
25 pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of
26 each Individual Settlement Amount allocated as wages.

1 HEARING ON PRELIMINARY APPROVAL

2 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
3 approval of the Class Settlement.

4 INCENTIVE AWARD

5 “Incentive Award” shall mean any additional monetary payment provided to the Class
6 Representative for her efforts and risks on behalf of the Settlement Class in this Action.

7 INDIVIDUAL SETTLEMENT AMOUNT

8 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
9 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
10 Amount does not include any portion of the PAGA Payment.

11 NET SETTLEMENT AMOUNT

12 “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative
13 Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount
14 allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004
15 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California
16 Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

17 OPT OUT

18 “Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from
19 the Class Settlement in accordance with the terms of the Class Notice and no later than the Response
20 Deadline.

21 OPT-OUTS

22 “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class
23 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

24 PAGA PAYMENT

25 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
26 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
27 \$10,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
28 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the LWDA and

1 twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA Settlement Class. Class Counsel shall give
2 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,
3 subdivision (l)(2).

4 **PAGA PERIOD**

5 “PAGA Period” shall mean the period from October 19, 2021, through the earlier of: October
6 31, 2023 or the date of court approval of the settlement.

7 **PAGA SETTLEMENT CLASS**

8 “PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants
9 as non-exempt employees in California during the PAGA Period. Defendants represents that the PAGA
10 Settlement Class consists of approximately 83 employees that worked a total of approximately 1,900
11 pay periods during the PAGA Period. An individual may not opt out of the PAGA Settlement Class.

12 **PARTIES**

13 “Parties” shall mean Plaintiff and Defendants.

14 **PLAINTIFF**

15 “Plaintiff” shall mean Plaintiff Elizabeth Popowski.

16 **PRELIMINARY APPROVAL DATE**

17 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
18 preliminarily approving this Settlement Agreement.

19 **RELEASED CLAIMS**

20 “Released Claims” shall mean those claims arising out of or related to the allegations set forth
21 in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including
22 claims for: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections
23 1194 and 1194.2, and the applicable IWC Wage Order(s); (2) failure to pay proper overtime wages in
24 violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (3)
25 failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor
26 Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal
27 periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and
28 the applicable IWC Wage Order(s); (5) failure to maintain accurate employment records in violation

of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (11) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (12) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing. No other claims are released other than those claims specifically plead in the Complaint and/or the PAGA notice to the LWDA or otherwise specifically identified herein. This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

RELEASED PARTIES

“Released Parties” shall mean Defendants and all of Defendants’ subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns, including High Desert Hotels, LLC.

RELEASING PARTIES

“Releasing Parties” shall mean every Class Participant and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

RESPONSE DEADLINE

“Response Deadline” shall mean the date forty-five (45) days following the date on which the Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class Members may submit a request for exclusion and/or objection to Class Settlement.

SETTLEMENT ADMINISTRATOR

“Settlement Administrator” shall mean Phoenix Settlement Administrators (or other administrator agreed on by the parties) which the Parties have agreed will be responsible for administration of the Class Settlement and related matters.

SETTLEMENT CLASS

“Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period. Defendants represent that the Settlement Class consists of approximately 85 Class Members that worked a total of approximately 4,208 workweeks during the Class Period.

SHARE FORM

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

FACTUAL AND PROCEDURAL BACKGROUND**PLAINTIFF’S CLAIMS**

Plaintiff, individually and in her representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the following violations: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to maintain accurate employment records in violation of Labor Code section

1 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
 2 (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
 3 and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804;
 4 (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226
 5 and 226.3; (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
 6 in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (11)
 7 statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

8 **DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

9 Class Counsel has conducted significant informal discovery during the prosecution of the
 10 Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a
 11 dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of thousands of pages of
 12 documents and other information produced by Plaintiff and Defendants; **(c)** analysis of employment
 13 data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendants;
 14 **(e)** investigation into the viability of class treatment of the claims asserted in the Action; **(f)** analysis of
 15 potential class-wide damages, including information sufficient to understand Defendants' potential
 16 defenses to Plaintiff's claims; **(g)** research of the applicable law with respect to the claims asserted in
 17 the Complaint and the potential defenses thereto; and **(h)** assembling and analyzing of data for
 18 calculating damages.

19 Class Counsel and the Class Representative have vigorously prosecuted this case, and
 20 Defendants have vigorously contested it. The Parties have engaged in sufficient investigation and
 21 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
 22 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
 23 with an experienced employment law mediator, which culminated in a settlement in principle, the terms
 24 of which are elaborated in this Settlement Agreement.

25 **ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS** 26 **SETTLEMENT**

27 The document and data exchange in this matter, as well as discussions between counsel, have
 28 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits

1 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
2 conducted in this Action and the information exchanged by the Parties through pre-mediation
3 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
4 compromise the issues on a fair and equitable basis.

5 The Class Representative and Class Counsel believe that the claims, causes of action,
6 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
7 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
8 necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel
9 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
10 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
11 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
12 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
13 alleged in the Action.

14 The Class Representative and Class Counsel believe that the settlement set forth in this
15 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
16 independent review of this Settlement Agreement by the Court in the approval process will confirm
17 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
18 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
19 and the Class Members.

20 **DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

21 Defendants have denied and continue to deny all allegations, claims, and contentions alleged
22 by Plaintiff in the Action. Defendants have expressly denied and continue to deny all charges of
23 wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions
24 alleged in the Action. Defendants contend that they complied with California and federal wage and
25 hour laws and has dealt legally and fairly with Plaintiff and the Class Members.

26 Defendants further deny that, for any purpose other than settling this Action, these claims are
27 appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further
28 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be

1 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
2 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendants'
3 respective businesses without further expensive litigation and the distraction and diversion of their
4 personnel with respect to matters at issue in the Action. Defendants have also taken into account the
5 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
6 Defendants have, therefore, determined that it is desirable and beneficial to it that the Action be settled
7 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

8 **INTENT OF THE CLASS SETTLEMENT**

9 The Class Settlement set forth herein intends to achieve the following: **(1)** entry of an order
10 approving the Class Settlement; **(2)** entry of judgment of the Action; **(3)** discharge of the Released
11 Parties from liability for any and all of the Released Claims; and **(4)** discharge of Defendants from
12 liability for any and all claims arising out of the Action.

13 **CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

14 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
15 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
16 conditional certification is appropriate because the Released Claims are being compromised without
17 need to establish the elements of those claims on which liability turns. The certification of the
18 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
19 Defendants, including without limitation, that certification of a class for trial purposes is or would be
20 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
21 treatment of any of the claims in the Action.

22 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not
23 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set
24 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*
25 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the
26 requirements for certification of a class for trial purposes in this Action or in any other action which
27 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff
28

1 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the
2 Settlement Class in connection with any later proceeding before the Court.

3 **APPOINTMENT OF CLASS COUNSEL**

4 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
5 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
6 Class Settlement pursuant to this Settlement Agreement.

7 **CONSIDERATION**

8 **SETTLEMENT AMOUNT**

9 The Parties agree to settle this Action for the Gross Settlement Amount of \$140,000.00. There
10 shall be no reversion to Defendants. Defendants shall pay the Gross Settlement Amount in full. The
11 Gross Settlement Amount and other actions and forbearances taken by Defendants shall constitute
12 adequate consideration for the Class Settlement and will be made in full and final settlement of: the
13 Released Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive
14 Award, the PAGA Payment (and any payments to individual PAGA Class Members resulting from the
15 PAGA Payment), and any other obligation of Defendants under this Settlement Agreement (other than
16 the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

17 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
18 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
19 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
20 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each
21 Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount
22 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
23 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

24 **INCENTIVE AWARD FOR PLAINTIFF**

25 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$5,000.00
26 for Elizabeth Popowski to acknowledge her efforts on behalf of the Settlement Class in this Action,
27 including assisting in the investigation and consulting with Class Counsel and providing crucial
28 documents to Class Counsel. Defendants shall not oppose any request by Plaintiff for an Incentive

1 Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from
2 the Gross Settlement Amount and shall be in addition to any distribution to which she may otherwise
3 be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered
4 wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such
5 payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award
6 approved by the Court and shall hold Defendants harmless from all liability with regard thereto.

7 **PAYMENT TO CLASS PARTICIPANTS**

8 Each Class Participant shall be eligible to receive payment of the Individual Settlement
9 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
10 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
11 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
12 Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount
13 and shall hold Defendants harmless from any and all liability with regard thereto.

14 **PAYMENT TO PAGA SETTLEMENT CLASS**

15 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
16 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
17 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
18 is \$10,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
19 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the LWDA and
20 twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA Settlement Class. The portion of the PAGA
21 Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class
22 based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member
23 during the PAGA Period as a proportion of all pay periods worked by all members of the PAGA
24 Settlement Class.

25 **TAX TREATMENT AND PAYMENT**

26 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
27 Settlement Amounts for Class Participants (including any payments to the Class Representative but
28 exclusive of her Incentive Award), the Parties agree that 20% of each Individual Settlement Amount

1 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
2 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
3 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
4 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
5 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
6 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
7 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
8 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
9 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendants
10 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
11 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
12 responsible for all other individual tax obligations.

13 With respect to the PAGA Payment and any payments made to individual members of the
14 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
15 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
16 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
17 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
18 to them.

19 **NO EFFECT ON EMPLOYEE BENEFIT PLANS**

20 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
21 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
22 program sponsored by Defendants. Such amounts will not form the basis for additional contributions
23 to, benefits under, or any other monetary entitlement under either Defendants' sponsored benefit plans,
24 policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall
25 not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any
26 other form of compensation for the purposes of either Defendants' benefit plan, policy, or bonus
27 program. Each Defendant retain the right to modify the language of its benefits plans, policies, and
28 bonus programs to reflect this intent and to make clear that any amounts paid pursuant to this Settlement

1 Agreement are not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring
2 term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting,
3 benefit accrual, or any other purpose, and that additional contributions or benefits are not required by
4 this Settlement Agreement. Defendants do not consider the Class Settlement payments “compensation”
5 for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or
6 bonus programs, or any other plan sponsored by either Defendant.

7 **CLASS ATTORNEY FEES AND EXPENSES**

8 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
9 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
10 Settlement Amount (i.e., \$46,666.67) and the award of costs and expenses up to an additional
11 \$15,000.00. Defendants agree to not object to any such fee, cost, or expense application in those
12 amounts.

13 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
14 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
15 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
16 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
17 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less
18 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
19 Attorney Fees and Expenses awarded.

20 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
21 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
22 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
23 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
24 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
25 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
26 be based on the “catalyst theory” and/or the “common fund doctrine.”
27
28

SETTLEMENT ADMINISTRATION**COSTS AND EXPENSES**

All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the PAGA Settlement Class, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and is not expected to exceed \$5,250.00.

PAYMENT BY DEFENDANTS

Defendants shall deposit the Gross Settlement Amount in a lump sum payment plus the employer-side payroll taxes to the Settlement Administrator within thirty (30) days of the Effective Date. In no event shall Defendants be obligated to pay or deposit with the Settlement Administrator more than \$140,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**THE SETTLEMENT ADMINISTRATOR**

The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries from Class Members concerning the Class Notice; determining Individual Settlement Amounts; determining individual payments to members of the PAGA Settlement Class; maintaining the settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing Individual Settlement Amounts to Class Participants; preparing, administering, and distributing individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties may direct. Additionally, the Settlement Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any.

1 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
2 Defense Counsel with summary information updating them as to the number of validated and timely
3 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
4 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
5 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
6 with proof of mailing of the Class Notice, without listing individual Class Member names which the
7 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
8 of the Court's Final Approval and Fairness Hearing.

9 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement
10 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
11 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
12 Participant, without any identifying personal information; **(b)** the number of Class Participants to
13 receive such payments, and **(c)** the final number of Opt-Outs and objections.

14 Administrative Expenses are not anticipated to exceed \$5,250.00. Prior to the calculation and
15 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
16 total Administrative Expenses through the conclusion of their services and such actual amount will be
17 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
18 Amounts.

19 **NOTICE TO CLASS MEMBERS**

20 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
21 after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with an
22 updated list of Class Members and members of the PAGA Settlement Class containing names, social
23 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
24 The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel
25 shall not receive a copy of this list.

26 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
27 Administrator shall determine the number of workweeks worked by each Class Member, populate the
28 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,

1 United States mail. The Class Notice shall also contain an easily-understood statement alerting the
2 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
3 and waiving all Released Claims against the Released Parties.

4 The Class Notice will inform Class Members of their estimated share of the settlement and the
5 number of workweeks they worked during the Class Period. Class Members may dispute their
6 workweeks if they believe they worked more weeks in the Class Period than Defendants' records show
7 by submitting information to the Settlement Administrator no later than forty-five (45) days after being
8 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined
9 Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendants to
10 resolve the dispute in good faith. If Plaintiff and Defendants cannot agree over the workweeks to be
11 credited, the Settlement Administrator shall make the final decision based on the information presented
12 by the Class Member and Defendants.

13 **OPT OUT PROCEDURE**

14 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
15 in the Class Settlement and shall become Class Participants without having to submit a claim form or
16 take any other action. To Opt Out of the Class Settlement, the Class Member must return a signed and
17 completed copy of the *Request for Exclusion Form* attached hereto as **Exhibit 3** to the Settlement
18 Administrator by the Response Deadline.

19 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior
20 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been
21 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace
22 search and seek an address correction for such Class Members, and a second Class Notice will be sent
23 to any new or different address obtained.

24 It will be presumed that, if an envelope containing the Class Notice has not been returned within
25 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)
26 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
27 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
28 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall

1 specify the number of Class Members to whom the Class Notice was sent and the number of Class
2 Members to whom the Class Notice was not delivered, as well as information relating to the number
3 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

4 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
5 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
6 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
7 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
8 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
9 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

10 Class Participants will be bound by the Release of Released Claims set forth in the definition
11 of “Released Claims” provided in this Settlement Agreement.

12 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from
13 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
14 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
15 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

16 **OBJECTION PROCEDURE**

17 The Class Notice shall inform the Class Members of their right to object to the Class Settlement
18 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit
19 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class
20 Participants may object to the Settlement. The objection should include the case name and number and
21 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the
22 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class
23 and the reasons why the Class Settlement should not be approved, including the legal and factual
24 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and
25 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will
26 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense
27 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness
28 Hearing, either in person or through a lawyer retained at their own expense.

NOTICE OF FINAL JUDGMENT

Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and entered a final order certifying the Class for settlement purposes only and approving the Class Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on its website at a web address to be included in the Class Notice.

CLASS SETTLEMENT FUNDING AND DISTRIBUTION**ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

The claims of all Class Members are settled for the Gross Settlement Amount of \$140,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$5,250.00;
2. Class Counsel's attorney fees not to exceed \$46,666.67;
3. Class Counsel's litigation costs and expenses not to exceed \$15,000.00;
4. The Incentive Award, not to exceed \$5,000.00; and
5. PAGA Payment to LWDA of \$7,500.00.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendants will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other

1 reasonably required information the Settlement Administrator requests to perform the calculations
2 required under this Settlement Agreement. Defendants shall have no responsibility for deciding the
3 validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement
4 Agreement, shall have no involvement in or responsibility for the determination or payment of
5 Employee's Taxes and Required Withholding, and shall have no liability for any errors made with
6 respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator
7 will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the
8 Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants
9 represent and understand that they shall be solely responsible for any and all tax obligation associated
10 with their respective Individual Settlement Amounts and Incentive Awards.

11 **CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE PAGA**
12 **SETTLEMENT CLASS**

13 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
14 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
15 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
16 is \$10,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
17 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$7,500.00) to the LWDA and
18 twenty-five percent (25%) (i.e., \$2,500.00) to the PAGA Settlement Class.

19 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
20 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
21 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
22 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
23 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
24 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendants
25 harmless from any and all liability with regard thereto.

26 Defendants will provide the Settlement Administrator with any information reasonably
27 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
28 member, and any other reasonably required information the Settlement Administrator requests to

1 perform the calculations required under this Settlement Agreement. Defendants shall have no
2 responsibility for deciding the validity of the individual payment amounts allocated to each member of
3 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
4 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
5 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
6 Taxes and Required Withholding.

7 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
8 obligation associated with their respective shares of the PAGA Payment.

9 **TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

10 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
11 approved by the Court no later than fourteen (14) days after Defendants have deposited the Gross
12 Settlement Amount and Employer's Taxes (on the portion of the Net Settlement Amount allocated to
13 the payment of wages, as set forth herein) with the Settlement Administrator.

14 **TIME FOR PAYMENT OF INCENTIVE AWARD**

15 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
16 Court no later than fourteen (14) days after Defendants have deposited the Gross Settlement Amount
17 and Employer's Taxes (on the portion of the Net Settlement Amount allocated to the payment of wages,
18 as set forth herein) with the Settlement Administrator..

19 **TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

20 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
21 due to it and approved by the Court no later than fourteen (14) days after Defendants have deposited
22 the Gross Settlement Amount and Employer's Taxes (on the portion of the Net Settlement Amount
23 allocated to the payment of wages, as set forth herein) with the Settlement Administrator..

24 **TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND INDIVIDUAL** 25 **SETTLEMENT AMOUNTS**

26 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
27 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
28 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the

1 last-known address no later than fourteen (14) days after Defendants have deposited the Gross
2 Settlement Amount and Employer's Taxes (on the portion of the Net Settlement Amount allocated to
3 the payment of wages, as set forth herein) with the Settlement Administrator.. If the Settlement
4 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
5 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
6 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
7 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
8 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
9 remaining monetary obligations have been calculated and accounted for.

10 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
11 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
12 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the
13 estate of that Class Member and delivered to the executor or administrator of that estate, unless the
14 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code
15 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

16 **NON-CASHED SETTLEMENT CHECKS**

17 Any funds associated with checks that have not been cashed within one hundred eighty (180)
18 days, will become void and the Individual Settlement Amount associated with the uncashed check will
19 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
20 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The
21 Parties agree that this disposition results in no "unpaid residue" within the meaning of California Civil
22 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,
23 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendants shall
24 not be required to pay any interest on said amount. For the purposes of determining whether Defendants
25 have met their financial obligation to pay the Individual Settlement Payment, Defendants will be
26 deemed to have fulfilled its obligation upon the mailing of the check to the Class Member, regardless
27 of whether such Class Member subsequently negotiates the check.
28

**DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR PAYMENT OF
INDIVIDUAL SETTLEMENT SHARES**

Class Member Workweeks and the corresponding Individual Settlement Amount shall be calculated using the employment and payroll records of Defendants, which presumptively shall be deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other written employment records, to the Settlement Administrator. Each Class Member may dispute the number of Workweeks or their estimated Individual Settlement Amount contained on their Class Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for Defendants, shall inform Class Counsel of the dispute without disclosing the identity of the Class Member making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Class Members with the assistance of Defendants, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendants shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

NULLIFICATION OF THIS SETTLEMENT AGREEMENT

NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

The Class Settlement and conditiona

l class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following

1 occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in the form agreed
 2 to by the Parties; **(b)** the Court should for any reason fail to enter a judgment with prejudice of the
 3 Action, or **(c)** the approval of the Class Settlement and judgment is reversed, modified, or declared or
 4 rendered void. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any
 5 perceived defects in this Settlement Agreement to facilitate approval.

6 **PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION**

7 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant(s)
 8 shall have the right (but not the obligation) to void this Settlement Agreement. If the number of
 9 workweeks is greater than 5% above that represented by Defendant(s), as described above, then the
 10 Gross Settlement Amount shall be increased proportionally for each additional week worked.

11 **INVALIDATION**

12 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
 13 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
 14 of the Class Settlement are to remain in full force and effect.

15 **STAY ON APPEAL, WAIVER**

16 If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall
 17 be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount or take any other
 18 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation
 19 of law. Provided the Judgment is consistent with the terms and conditions of this Agreement, the
 20 Parties, their respective counsel, and all Participating Class Members who did not object to the
 21 Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all
 22 rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
 23 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the
 24 right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties'
 25 obligations to perform under this Agreement will be suspended until such time as the appeal is finally
 26 resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net
 27 Settlement Amount.
 28

MOTIONS FOR COURT APPROVAL**PRELIMINARY APPROVAL**

As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion.

FINAL APPROVAL

The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the Settlement Class for settlement purposes only and approving the Class Settlement as being fair, reasonable, and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

RELEASES AND WAIVERS**RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise, and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant, will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

Class Participants will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

1 “An employer shall not require the execution of a release of a claim or right on account
2 of wages due, or to become due, or made as an advance on wages to be earned, unless
3 payment of those wages has been made.”

4 **RELEASE OF CLAIMS BY PLAINTIFF**

5 Plaintiff, on behalf of herself and her dependents, heirs and assigns, beneficiaries, devisees,
6 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
7 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
8 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
9 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
10 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
11 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
12 law or in equity, which she may now have or may have after the signing of this Settlement Agreement,
13 arising out of or in any way connected with her employment with Defendants including, the Released
14 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
15 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
16 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
17 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
18 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age
19 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
20 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
21 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
22 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
23 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
24 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
25 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
26 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
27 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
28

1 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
2 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
3 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
4 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
5 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
6 to hold harmless Defendants and the Released Parties from any and all claims for attorney fees and
7 costs arising out of the matters released in this Settlement Agreement.

8 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of
9 California Civil Code section 1542, which provides as follows:

10 **“A general release does not extend to claims that the creditor or releasing party**
11 **does not know or suspect to exist in his or her favor at the time of executing the**
12 **release and that, if known by him or her, would have materially affected his or her**
13 **settlement with the debtor or released party.”**
14

15 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
16 relinquishes all rights and benefits she may have under section 1542 as well as any other statutes or
17 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
18 different from those which she now knows or believes to be true with respect to the subject matter of
19 all the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby
20 does fully, finally, and forever settle and release any and all claims against the Released Parties, known
21 or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
22 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
23 of such different or additional facts.

24 **CIRCULAR 230 DISCLAIMER**

25 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
26 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
27 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
28 communication or disclosure between or among the parties or their attorneys and other advisers, is or

1 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
2 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
3 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or its own
4 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
5 Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any
6 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
7 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that
8 may be imposed on the Acknowledging Party; and (3) no attorney or advisor to any other party has
9 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
10 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
11 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
12 Settlement Agreement.

13 **DUTIES OF THE PARTIES**

14 **MUTUAL FULL COOPERATION**

15 The Parties agree to cooperate fully with one another to accomplish and implement the terms
16 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
17 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
18 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
19 by this Settlement Agreement and any other efforts that may become necessary by court order or
20 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
21 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendants and
22 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
23 this Settlement Agreement.

24 **DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

25 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
26 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
27 legal challenge, whether by appeal or collateral attack.
28

DUTIES PRIOR TO COURT APPROVAL

Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a preliminary order scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and directing the mailing of the Class Notice to Class Members. While Defendants can reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

MISCELLANEOUS PROVISIONS**VOIDING THIS SETTLEMENT AGREEMENT**

Pending Court approval and other than as provided herein, if any of the conditions set forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of either Plaintiff or Defendants, be ineffective, void, and of no further force and effect, and may not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum. If either Party decides to void the Settlement Agreement, then the Settlement Agreement and conditional class certification shall be considered void, and neither the Settlement Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator fees and costs actually incurred.

DIFFERENT FACTS

The Parties acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out to be different from the facts now known by each party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or

1 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
2 and binding despite such difference.

3 **NO PRIOR ASSIGNMENTS**

4 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
5 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
6 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
7 except as set forth herein.

8 **NON-ADMISSION**

9 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
10 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
11 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
12 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
13 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
14 and contingencies. Nothing herein shall constitute any admission by Defendants of wrongdoing or
15 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
16 admission by Defendants regarding the merits of the Claims in this Action, including but not limited
17 to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
18 an admission by Defendants that the Action was properly brought as a class or representative action
19 other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each
20 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
21 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
22 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
23 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
24 liability on the part of Defendants or of the truth of any of the factual allegations in the Complaint in
25 the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence
26 of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding
27 in any court, administrative agency, or other tribunal.
28

NON-EVIDENTIARY USE

Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any individual who requested to be excluded from the Settlement Class), Defendants, or its, her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendants and the Released Parties to prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

MEDIA OR PRESS

Plaintiff and Defendants, and their respective counsel, recognize, accept, and agree that the Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media or press.

NON-RETALIATION

Defendants understand and acknowledge that they have a legal obligation to not retaliate against any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class Settlement. Defendants will refer any inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to Opt Out of the Class Settlement.

CONSTRUCTION

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement Agreement is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this

1 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
2 next business day.

3 **GOVERNING LAW**

4 This Settlement Agreement is intended to and shall be governed by the laws of the State of
5 California, without regard to conflict of law principles, in all respects, including execution,
6 interpretation, performance, and enforcement.

7 **NOTICES**

8 Except for Class Member notices required to be made by the Settlement Administrator, all
9 notices or other communications required or permitted under this Settlement Agreement shall be in
10 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
11 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
12 party appearing in this Settlement Agreement.

13 **CAPTIONS AND INTERPRETATIONS**

14 Section titles or captions contained herein are inserted as a matter of convenience and for
15 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
16 or any provision thereof.

17 **MODIFICATION**

18 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
19 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
20 Agreement has been granted by the Court, then any such amendments or modifications to this
21 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
22 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

23 **INTEGRATION CLAUSE**

24 This Settlement Agreement contains the entire agreement between the Parties relating to the
25 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
26 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
27 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
28 Settlement Agreement may be waived except in writing as provided above.

SUCCESSORS AND ASSIGNS

This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class Members (excluding only persons who timely Opt Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

CORPORATE SIGNATORIES

Any person executing this Settlement Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Settlement Agreement or any such related document.

EXECUTION IN COUNTERPARTS

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

ATTORNEY FEES, COSTS, AND EXPENSES

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

ACTION TO ENFORCE AGREEMENT

The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVE:

Dated: 4/18/2024

DocuSigned by:
Elizabeth Popowski
BCC2698E5D45436...
Elizabeth Popowski
Plaintiff and Class Representative

DEFENDANT:

Dated: _____

HDHCA LLC

By: _____

Title: _____

DEFENDANT:

DATED: S & K INNS OF AMERICA, INC.

BY: _____

TITLE: APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

1 Dated: April 18, 2024
2
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4

Melmed Law Group P.C.



Megan E. Ross
Attorneys for Plaintiff

5 **DEFENDANT'S COUNSEL:**

6 Dated: _____
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O'Hagan Meyer

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Brendan Sapien
Eric O. Zeiger
Attorneys for Defendant HDHCA

DEFENDANT'S COUNSEL:

Dated: _____

Gordon Rees Scully Mansukhani, LLP

Mark Posard
Attorneys for Defendant S & K Inns of America,
Inc.

EXECUTION

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES**CLASS REPRESENTATIVE:**

Dated: _____

Elizabeth Popowski
Plaintiff and Class Representative

DEFENDANT:Dated: 6/3/2024

HDHCA LLC


By: Amy ReynoldsTitle: President HDHCA LLC**DEFENDANT:**

DATED: June 6, 2024 | 10:50 AM PDT
S & K INNS OF AMERICA, INC.

DocuSigned by:



SD2A0946EAC04BD...

BY: Steve Marsh

TITLE: owner**APPROVED AS TO FORM BY COUNSEL****CLASS COUNSEL:**

1 Dated: _____

Melmed Law Group P.C.

2
3 _____
4 Megan E. Ross
Attorneys for Plaintiff

5 **DEFENDANT'S COUNSEL:**

6 Dated: June 3, 2024

O'Hagan Meyer

7 

8 _____
9 Brendan Sapien
Eric O. Zeiger
10 Attorneys for Defendant HDHCA

11
12
13 **DEFENDANT'S COUNSEL:**

14
15 Dated: _____

Gordon Rees Scully Mansukhani, LLP

16
17 _____
18 Mark Posard
19 Attorneys for Defendant S & K Inns of America,
20 Inc.