

HAROUT MESSRELIAN (SBN: 272020)
MESSRELIAN LAW INC.
500 N. Central Ave., Suite 840
Glendale, CA 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELIZABETH MORA, on behalf of herself,
the state of California, and the Aggrieved
Employees

Plaintiff,

vs.

IHG MANAGEMENT (MARYLAND)
LLC; InterContinental Hotels Group
Resources, LLC; Intercontinental Hotels of
San Francisco, Inc.; Inter-Continental Hotels
Corporation; Six Continents Hotels, Inc.;
KHRG Huntington Beach LLC; KHRG
Argyle LLC; KHRG Wilshire LLC; KHRG
Westwood LLC; KHRG NPC LLC; KHRG
Sacramento LLC; KHRG Employer, LLC;
KHRG SF Wharf LLC; Kimpton Hotel &
Restaurant Group, LLC; KHRG Canary
LLC; KHRG La Peer LLC; KHRG SFD
LLC; KHRG SF Wharf U2 LLC; KHRG
Sutter LLC; KHRG Sutter Union LLC;
Holiday Inn Los Angeles Gateway –
Torrance; Holiday Inn Express and Suites -
San Francisco Fisherman Wharf; Hotel
Indigo – Los Angeles Downtown; Hotel
Indigo - San Diego Gaslamp Quarter;
InterContinental - Los Angeles Downtown;
InterContinental - San Diego;
InterContinental - San Francisco;
InterContinental - Mark Hopkins; Regent -
Santa Monica; Kimpton Shorebreak
Huntington Beach Resort; Kimpton Everly
Hotel; Kimpton Hotel Wilshire; Kimpton
Hotel Palomar Los Angeles Beverly Hills;
Kimpton Rowan Palm Springs Hotel;
Kimpton Sawyer Hotel; Kimpton Alma;
Kimpton Alton Hotel; Kimpton Hotel Enso;
Kimpton Canary Hotel; and Kimpton La
Peer Hotel,

Case No.: 23STCV13726

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
UNOPPOSED MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Action filed: 6/14/23

Date: 8/29/24

Time: 8:30am

Dept: 55

Reservation ID:
415312841219

Department: 55, Hon. Alison
Mackenzie

Submitted Herewith Under Separate Cover:

1. Plaintiff's Notice of Unopposed Motion for Approval of PAGA Settlement; Memorandum of Points and Authorities in Support Thereof;
2. [Proposed] Order

1 Defendants.

2
3
4 **DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF**
5 **UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE**

6 I, HAROUT MESSRELIAN, declare and state as follows:

7 1. I am an attorney duly licensed to practice before all the Courts of the State of
8 California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for
9 Plaintiff Elizabeth Mora (“Plaintiff”) in her lawsuit against Defendants IHG MANAGEMENT
10 (MARYLAND) LLC; InterContinental Hotels Group Resources, LLC; Intercontinental Hotels of
11 San Francisco, Inc.; Inter-Continental Hotels Corporation; Six Continents Hotels, Inc.; KHRG
12 Huntington Beach LLC; KHRG Argyle LLC; KHRG Wilshire LLC; KHRG Westwood LLC;
13 KHRG NPC LLC; KHRG Sacramento LLC; KHRG Employer, LLC; KHRG SF Wharf LLC;
14 Kimpton Hotel & Restaurant Group, LLC; KHRG Canary LLC; KHRG La Peer LLC; KHRG
15 SFD LLC; KHRG SF Wharf U2 LLC; KHRG Sutter LLC; KHRG Sutter Union LLC; Holiday
16 Inn Los Angeles Gateway – Torrance; Holiday Inn Express and Suites - San Francisco Fisherman
17 Wharf; Hotel Indigo – Los Angeles Downtown; Hotel Indigo - San Diego Gaslamp Quarter;
18 InterContinental - Los Angeles Downtown; InterContinental - San Diego; InterContinental - San
19 Francisco; InterContinental - Mark Hopkins; Regent - Santa Monica; Kimpton Shorebreak
20 Huntington Beach Resort; Kimpton Everly Hotel; Kimpton Hotel Wilshire; Kimpton Hotel
21 Palomar Los Angeles Beverly Hills; Kimpton Rowan Palm Springs Hotel; Kimpton Sawyer
22 Hotel; Kimpton Alma; Kimpton Alton Hotel; Kimpton Hotel Enso; Kimpton Canary Hotel; and
23 Kimpton La Peer Hotel (hereinafter collectively “IHG” or “Defendant(s)”).

24 2. I am experienced in handling employment law matters and specifically wage and
25 hour representative and individual actions. My qualifications are as follows: I received my JD
26 from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout
27 Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc.
28 Since 2011, I have filed and handled over 350 civil actions and/or claims involving representative

1 actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on
2 behalf of my clients and have been appointed Class Counsel in three class action cases –*Zohrab*
3 *Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No.
4 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf*
5 *of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles
6 Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others*
7 *similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No.
8 CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts,
9 the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino
10 County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior
11 Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

12 3. Except as otherwise indicated, I have personal knowledge of all matters set forth
13 herein and, if called as a witness, could and would competently testify thereto under oath.

14 ***Factual and Procedural Background***

15 4. Defendants operate different hotel brands with numerous locations in the state of
16 California. Plaintiff Elizabeth Mora was classified as an hourly, non-exempt employee and
17 worked for Defendant IHG Management (Maryland), LLC as a cook at La Boucherie restaurant
18 located at 900 Wilshire Blvd., inside of the InterContinental Hotel in downtown Los Angeles,
19 from approximately December 2022/January 2023 through February 2023.

20 5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
21 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
22 (“PAGA”). On February 17, 2023, Plaintiff Elizabeth Mora on behalf of herself and Defendants’
23 other California non-exempt employees (hereafter collectively the “Aggrieved Employees”)
24 gave written notice by electronic service to the California Labor and Workforce Development
25 Agency (“LWDA”) and via certified mail to Defendants of their claims against Defendant. In
26 her notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees
27 that Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor
28 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code

1 Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide
2 meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during
3 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements
4 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor Code
5 Section 1174/1174.5);(8) failed to pay wages at the end of employment (Labor Code section
6 203); (9) failed to reimbursement business expenses (Labor Code section 2802); (10) Failure to
7 provide tips; and claims under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff
8 filed her initial lawsuit on June 14, 2023, in the Superior Court for the State of California,
9 County of Los Angeles, Case No. 23STCV13726, with a total of 18 causes of action for
10 individual wage and hour violations, PAGA penalties, and individual claims for FEHA sexual
11 harassment/failure to prevent harassment/retaliation, retaliation under Labor Code section
12 1102.5, and wrongful termination in violation of public policy.

13 6. On or around April 17, 2024, Plaintiff filed a supplemental notice to the LWDA,
14 adding additional corporate entities, additional alleged violations, and adding additional claims
15 for penalties under the Private Attorneys General Act (PAGA) based on the following legal
16 theories: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed;
17 (3) failure to provide compliant meal periods, or premium pay for non-compliant meal periods;
18 (4) failure to authorize and permit compliant rest periods, or provide premium pay for non-
19 compliant rest periods; (5) failure to provide accurate, itemized wage statements and/or
20 otherwise maintain accurate and complete records; (6) failure to timely pay wages during
21 employment and/or upon separation of employment; (7) failure to reimburse business expenses;
22 (8) failure to provide tips; (9) failure to pay split shift premiums; (10) unlawful deductions; (11)
23 failure to provide personnel file; (12) failure to provide suitable seating and resting facilities;
24 (13) sick leave violations; (14) failure to pay vested vacation/paid time off; and (15) unlawful
25 agreements and unlawful background inquiries. On or around April 22, 2024, Plaintiff filed a
26 First Amended Complaint in this action, which is the operative complaint, alleging one cause of
27 action under PAGA for Labor Code violations based on the legal theories as presented in
28 Plaintiff's April 17, 2024 supplemental PAGA notice to the LWDA.

1 7. Through informal discovery, Defendants produced records and represented that
2 it employed approximately 5,259 workers falling within Plaintiff's Aggrieved Employees
3 definition for the period from February 17, 2022 (one year before Plaintiff's initial PAGA
4 notice) through March 2024, who worked approximately 163,323 pay periods that same time
5 period.

6 8. The Settlement Agreement covers PAGA Members, which are Aggrieved
7 Employees employed on or after February 17, 2022 through June 6, 2024 at the following hotel
8 locations: Holiday Inn Los Angeles Gateway – Torrance; Holiday Inn Express and Suites - San
9 Francisco Fisherman Wharf; Hotel Indigo – Los Angeles Downtown; Hotel Indigo - San Diego
10 Gaslamp Quarter; InterContinental - Los Angeles Downtown; InterContinental - San Diego;
11 InterContinental - San Francisco; InterContinental - Mark Hopkins; Regent - Santa Monica;
12 Kimpton Shorebreak Huntington Beach Resort; Kimpton Everly Hotel; Kimpton Hotel
13 Wilshire; Kimpton Hotel Palomar Los Angeles Beverly Hills; Kimpton Rowan Palm Springs
14 Hotel; Kimpton Sawyer Hotel; Kimpton Alma; Kimpton Alton Hotel; Kimpton Hotel Enso;
15 Kimpton Canary Hotel; and Kimpton La Peer Hotel. Attached as **Exhibit 1** to this Declaration
16 is a true and accurate copy of the Settlement Agreement and the PAGA notice that will be sent
17 to the alleged aggrieved employees covered by the Settlement Agreement, being Plaintiff and
18 all current and former non-exempt employees of Defendants in the State of California from
19 February 17, 2022 through June 6, 2024 ("PAGA Members"), with their payment.

20 9. Defendant denies any liability or wrongdoing of any kind whatsoever associated
21 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
22 finally, and forever compromise, and discharge all claims known or unknown related to those
23 alleged in Plaintiff's lawsuit.

24 10. The Parties attended a full-day mediation with experienced mediator Louis
25 Marlin, Esq. on March 8, 2024. The Parties ultimately settled the matter through follow-up
26 settlement discussions thereafter with the continued assistance of Mr. Marlin as mediator.
27 Before agreeing to the terms of the Settlement Agreement, the Parties engaged in extensive
28 informal discovery regarding Defendant's policies, practices, operations, time and payroll

1 information and other topics. Prior to negotiation, Defendants produced Plaintiff's personnel
2 file, time and payroll data for Plaintiff, and time records and payroll records for 806 aggrieved
3 employees falling within Plaintiff's Aggrieved Employees definition and during the applicable
4 PAGA period. Through extensive arm's length negotiations and only after extensive discovery
5 and investigation were performed, the Parties agreed to settlement terms.

6 11. The Parties conducted investigation of the facts and law both before and after the
7 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
8 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
9 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
10 the Parties and their respective counsel are of the opinion that the Settlement for the
11 consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are
12 in the best interests of Plaintiff, the PAGA Members, and Defendant in light of all known facts
13 and circumstances and the risks inherent in litigation, especially in this post-pandemic era when
14 most California businesses are still struggling to remain afloat, much less prosper and make a
15 large profit.

16 12. The Parties further recognize that the issues presented in the Action are likely
17 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
18 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
19 to the maximum potential benefits, especially in light of the post- pandemic era and the business
20 climate.

21 13. Plaintiff alleges a broad range of PAGA claims but believes that some of the
22 strongest claims are that Plaintiff and other PAGA Members were not provided meal breaks
23 under the law and that Defendants failed to calculate the correct regular rate of pay in paying
24 PAGA members correct overtime compensation under the law for overtime hours worked. I
25 considered various sources of information that enabled me to decipher the key issues regarding
26 labor code compliance in this case. Among other things, I considered the following:

- 27 • Defendants produced and I reviewed Plaintiff's personnel file.
- 28 • I requested that Defendants provide any and all policies, memos, and guides regarding

overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, background checks, suitable seating, arbitration agreements, union agreements, vacation and sick leave, and compensation plans, among others, in effect during the relevant time period beginning in February 2022. Defendants produced those policies, both independently where they existed, and as part of their employee handbook and/or union agreements.

- I requested that Defendants provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendants provided the answers to each of these questions.
- I requested a sample of time and payroll records for the relevant time period. Defendants provided a sampling of time and pay records for 806 of its employees. This represents approximately 15.3% of the total employees (5259) that Defendants employed during the PAGA Period based on data available at the time.
- I then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, regular rate of pay violations, and if there was any rounding/time shaving issues.
- I analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for “off the clock” work and business expense reimbursement, especially as it relates to “manageability” arguments brought up by the defense.

14. Plaintiff contends that the civil penalty statutes applicable to the Action arise from violations of the California Labor Code, including, but not limited to, Labor Code §§ 226.7, 510, 512, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor Code violation may be awarded a sum of money for each pay period in which he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory. As it relates to Plaintiff’s argument for meal break violations, Plaintiff’s data analysis revealed a shift violation rate of 3.6% for short, late, or no meal breaks. If you extrapolate the 3.6% shift violation rate, it amounts to 26.8% of pay periods having at least one meal period violation. As such, the maximum exposure for meal period violations in the PAGA period would be **\$2,188,550.00**, which is calculated as follows: 163,323 pay periods x 26.8% equals 43,771 affected pay periods; 43,771 pay periods x \$50/pay period (civil penalty) amounts to \$2,188,550 in exposure. The latter

1 exposure calculation does not take into account the fact that Defendants had strong, written meal
2 period policies and that the sampling revealed that Defendants paid 3,413 hours of meal period
3 premiums for a total amount of \$82,014.00.

4 15. As it relates to Plaintiff's argument for meal break violations, Plaintiff's data
5 analysis revealed a shift violation rate of 3.6% for short, late, or no meal breaks. If you
6 extrapolate the 3.6% shift violation rate, Plaintiff argues this amounts to 26.8% of pay periods
7 having at least one meal period violation. As such, the maximum exposure for meal period
8 violations in the PAGA period would be **\$4,377,100**, which is calculated as follows: 163,323
9 pay periods x 26.8% equals 43,771 affected pay periods; 43,771 pay periods x \$100/pay period
10 (civil penalty) amounts to \$4,377,100 in exposure. The latter potential penalty exposure
11 calculation does not take into account the fact that Defendants had strong, written meal period
12 policies and training, and that the sampling revealed that Defendants paid 3,413 hours of meal
13 period premiums for a total amount of \$82,014.00.

14 16. As it relates to Plaintiff's argument for regular rate of pay violations, Plaintiff's
15 allegation was that bonus/incentive payments were not included in the regular rate of pay
16 calculation for purposes of calculating the correct overtime rates and/or sick pay rates. The
17 sampling received revealed a total of 623 total bonus/incentive payments over the span of 16,500
18 pay periods, which is approximately 3.8% of the pay periods. If there was a regular rate violation
19 in 3.8% of the pay periods, it would amount to approximately 6,206 pay periods (163,323 x
20 3.8%) and the exposure would be **\$620,630**, which is calculated by multiplying 6,206 pay
21 periods x \$100/pay period (civil penalty). The latter calculation assumes that overtime hours
22 were actually worked in each pay period in which an incentive or bonus payment was made,
23 however, this is not in line with reality since the data analysis revealed that 16.8% of workdays
24 were greater than 8 hours. Furthermore, Defendant disputes that any bonus or incentive
25 payments were non-discretionary in nature and disputes that the regular rate calculation was
26 incorrect. Any alleged derivative violation under Labor Code section 226 for regular rate
27 violations would once again amount to **\$620,630**, which is calculated by multiplying 6,206 pay
28 periods x \$100/pay period (civil penalty). Note that the \$100 per pay period calculation is based
on *Gunther v. Alaska Airlines* (2021) 72 Cal. App. 5th 334, since a paystub was actually provided

1 by Defendants.

2 17. As it relates to Plaintiff's other claims, and unlike the arguments for meal period
3 violations and regular rate violations, there would likely be issues with proof. As it relates to
4 Plaintiff's claims for rest period violations and unpaid "off the clock" work, there is no
5 documentary evidence or data at this stage that would support those claims and Defendant has
6 asserted many defenses. Plaintiff recognizes the challenges in proving these alleged violations.
7 As it relates to Plaintiff's claims for minimum wage violations, the data analysis showed
8 minimal, isolated issues, if any, and did not reveal any unlawful group-wide practices, such as
9 rounding, auto-deduction of meal periods, or incomplete/inaccurate records. As it relates to
10 Plaintiff's claims for overtime compensation, the data analysis of the sampling did not reveal
11 any violations other than the narrow regular rate issue as noted above. Moreover, Defendants
12 provided strong written policies as it related to business expense reimbursement, including the
13 "Dress Code Policy" and "Cell Phone/Mobile Device Policy". Additionally, as further noted
14 below, many employees were union members. Their Collective Bargaining Agreements
15 included provisions covering overtime, meal and rest breaks, and wage calculations, which
16 could be a basis for preemption and weigh against a finding of liability. In many other areas,
17 Defendant also presented evidence that it has either complied with, or made good faith attempts
18 to comply with, California law. The other claims for violations of Labor Code sections 203, 204,
19 and 226 for not being paid all wages owed every pay period or at the end of employment as well
20 as not receiving accurate, itemized wage statements may well be subject to this good faith
21 defense. Moreover, on the issue of accurate, itemized wage statements under Labor Code
22 Section 226, Defendant had timely filed a notice of cure with the LWDA on or around March
23 22, 2023, wherein Defendant stated that they had inadvertently provided paystubs with the legal
24 name of "IHG Management Maryland LLC" instead of "IHG Management (Maryland) LLC"
25 and that they fixed the typographical error going back 3 years. As to claims for suitable seating
26 violations, unlawful deductions, reporting time violations, sick leave violations, gratuity
27 violations, unpaid vested vacation wages, unlawful agreements, and Labor Code section 208
28 and 432.6 violations, the records, policies, and investigation did not evidence liability or such

1 claims were likely preempted by the employee's union agreements.

2 18. The other major risk in this case revolves around the fact that Plaintiff and a
3 majority of other Aggrieved Employees in the PAGA period are union members. The latter
4 translates to there being arbitration provisions in the respective Collective Bargaining
5 Agreements that would potentially prevent a PAGA action in Court prior to individual
6 arbitration of PAGA penalties. Furthermore, there would certainly be an argument for
7 preemption under Section 301 of the Labor Management Relations Act (LMRA) as it relates to
8 the claimed Labor Code violations, particularly those involving overtime, meal and rest breaks,
9 and regular rate of pay. Also, it may be harder for Plaintiff to demonstrate that legal violations
10 occurred on a widespread basis if no union employee ever filed a grievance or complaint as to
11 the alleged issues.

12 19. Based on the above calculations, Plaintiff's aggregate potential exposure for the
13 strongest disputed claims would be **\$5,618,360**. Assuming that Plaintiff's calculations and
14 analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty
15 award as unjust, arbitrary, oppressive, or confiscatory. Based on the above analysis, a gross
16 settlement in the amount of \$1,250,000 is a strong result, especially in light of the risk factors
17 as discussed above. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
18 multiple PAGA penalties for the same violation for the same pay period under different Labor
19 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
20 civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
21 extremely small sums to PAGA claimants in the past. Defendants also adamantly dispute all of
22 Plaintiff's allegations in the operative Complaint.

23 20. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
24 multiple PAGA penalties for the same violation for the same pay period under different Labor
25 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
26 civil penalties arising under the various Labor Code statutes. Furthermore, judges in some cases
27 have awarded extremely small sums to PAGA claimants in the past, where the employees
28 received less than \$5 per pay period. Defendants also adamantly dispute all of Plaintiff's
allegations in the operative Complaint, and presented many potential defenses at the mediation.

1 21. PAGA states a court has discretion to award a lesser amount than the maximum
2 penalty. *See Lab. Code* § 2699(e)(2) (“...a court may award a lesser amount than the maximum
3 civil penalty amount specified by this part if, based on the facts and circumstances of the
4 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
5 or confiscatory.”); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
6 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
7 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
8 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
9 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
10 discounted award of only \$5 per violation because it was within the Court’s discretion to
11 significantly reduce PAGA penalties even when there is a finding that a violation of the
12 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess
13 of \$70 million and was successful in proving the PAGA claim during a bench trial. However,
14 the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and
15 stated that this reduction was warranted because imposing the maximum penalty would be
16 “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
17 meal break obligations and because the Court found the violations were minimal. Defendants
18 argued the same reduction in PAGA penalties should be applied in this case. Applying the same
19 formula here and assuming there was one violation during each pay period, the award of civil
20 penalties could not exceed \$816,615.00 in PAGA penalties (163,323 violations x \$5). As such,
21 this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
22 formula. Defendant has also posed formidable defenses to the Labor Code claims underlying
23 Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
24 Settlement Amount is uncertain.

25 22. The Parties further recognize that the issues presented in the Action are likely
26 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
27 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
28 to the maximum potential benefits to the PAGA Members and Plaintiff from continued
litigation.

23. The settlement of the Action involves monetary relief to all PAGA Members, Plaintiff, her attorneys, and the State of California.

24. Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated potential civil penalties amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiff and PAGA Members and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arms-length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law.

25. As such, the settlement of PAGA penalties in the gross sum of \$1,250,000.00, of which 75% of the net amount after attorney's fees [\$416,666.67], attorney costs [\$10,639.48], and settlement administrator fees [\$19,775.00], which is \$602,189.19 will be paid to the LWDA, and 25%, which equates to \$200,729.73, will be distributed to the PAGA Members, is reasonable and appropriate under the circumstances.

Plaintiff's Individual Settlement

26. Plaintiff did have individual claims for non-wage damages for FEHA sexual harassment, failure to prevent sexual harassment, FEHA retaliation, retaliation under Labor Code section 1102.5, and wrongful termination in violation of public policy. The parties agreed that the consideration Plaintiff received pursuant to an individual settlement agreement was to settle her individual non-wage claims that would have to go through arbitration. As part of this confidential agreement, Plaintiff also provided Defendant with a general release of all claims, whether known or unknown, including unknown claims covered by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved Employees and is adequate to represent the Aggrieved Employees.

Attorneys' Fees and Costs

27. I represent Plaintiff on a straight contingency basis. My firm's request for \$416,666.67 in attorney fees and \$10,639.48 in litigation costs is fair and reasonable. To date, I

1 have investigated and prosecuted this matter vigorously, including drafting the initial and
2 supplemental PAGA notices as well as the original complaint and amended complaint; drafting
3 informal discovery questions, reviewing Defendants' informal document production, including
4 wage and hour policies; sending and receiving emails on the case with defense counsel,
5 including substantive discussions; sending the PAGA data to Plaintiff's expert for
6 review/analysis and reviewing the expert's findings/conclusions; drafting a comprehensive
7 mediation brief and engaging in a private mediation; and drafting this PAGA approval motion.
8 I also expect to perform additional work on this case if the Court grants final approval of the
9 Settlement, including supervision of the Settlement Administrator's disbursement of the
10 settlement funds to the Aggrieved Employees. "Empirical studies show that, regardless of
11 whether the percentage method or the lodestar method is used, fee awards in class actions
12 average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47
13 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91
14 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480,
15 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation
16 of attorneys' fees). This is also consistent with my experience in cases involving PAGA claims.
17 This award is justified here because I achieved a strong result for the PAGA Members and the
18 State while bearing the substantial burdens of contingency representation.

19 28. My previous experience in litigating wage and hour actions also supports the
20 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
21 experience in similar matters was integral in evaluating the strengths and weaknesses of the
22 case against Defendants and the reasonableness of the Settlement. Because it is reasonable to
23 compensate me commensurate with my skill, reputation, and experience, attorney's fees of
24 approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber
25 and experience of opposing counsel in labor and employment litigation supports the fairness and
26 reasonableness of the requested fee award.

27 29. The litigation costs expended to aid in the representation of the PAGA Members
28 include the following: lawsuit filing fee of \$454.22; service of lawsuit fee of \$75.00; PAGA

1 initial filing fees of \$75.00; expert data analysis fee of \$950.00; mediation fee of \$9,000.00;
2 and miscellaneous filing fees of \$85.26 for a total of \$10,639.48. All of these costs are
3 documented and reasonably incurred.

4 ***Settlement Administration Costs***

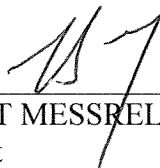
5 30. With regard to the settlement administration costs provision, it is reasonable.
6 Before agreeing to Apex Class Action LLC aka Apex Settlement Administrators (“Apex”), the
7 parties sought and reviewed bids from other reputable third-party administrator and Apex’s bid
8 was comparable. Apex’s administrator bid has been attached as **Exhibit 2** to this declaration.

9 ***Notice of Settlement to the LWDA***

10 31. Pursuant to Lab. Code § 2699(1)(2), my firm submitted a copy of the Settlement
11 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
12 copies of this submission with the LWDA and the confirmation email are collectively attached
13 as **Exhibit 3** to this declaration. My firm will further provide a copy of the Court’s Order and
14 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
15 required by Labor Code sections 2699(1)(2)-(3).

16 I declare under the penalty of perjury of the laws of the State of California that the
17 foregoing is true and correct to the best of my knowledge.

18
19 Executed on June 21, 2024, at Glendale, California.

20
21 
22 _____
23 HAROUT MESSRELIAN,
24 Declarant
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

[illegible]

On June 21, 2024, I served the foregoing **DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT** thereon fully prepaid, in the United States mail at Glendale, California, and/or by following one of the methods of service as follows:

EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Elizabeth Mora v. IHG Management (Maryland) LLC
Los Angeles County Superior Court
Case Number 23STCV13726

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties (defined below) to this settlement agreement (“Agreement” or “Settlement”), subject to the approval of the Court, that the settlement of this Action (defined below) shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere herein.

This Agreement is made by and between Defendants IHG Management (Maryland) LLC, InterContinental Hotels Group Resources, LLC; Intercontinental Hotels of San Francisco, Inc.; Inter-Continental Hotels Corporation; Six Continents Hotels, Inc.; KHRG Huntington Beach LLC; KHRG Argyle LLC; KHRG Wilshire LLC; KHRG Westwood LLC; KHRG NPC LLC; KHRG Sacramento LLC; KHRG Employer, LLC; KHRG SF Wharf LLC; Kimpton Hotel & Restaurant Group, LLC; KHRG Canary LLC; KHRG La Peer LLC; KHRG SFD LLC; KHRG SF Wharf U2 LLC; KHRG Sutter LLC; and KHRG Sutter Union LLC (collectively, “Defendants”), on the one hand, and Plaintiff Elizabeth Mora (“Plaintiff”), on behalf of herself, the Aggrieved Employees (defined below), and the State of California, on the other hand (Defendants and Plaintiff are individually referred to herein as a “Party” and collectively referred to as the “Parties”).

The Parties agree that all claims under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”) that were or could have been asserted in *Elizabeth Mora v. IHG Management (Maryland) LLC*, Los Angeles County Superior Court, case number 23STCV13726 (the “Litigation” or “Action”) and Plaintiff’s letters to the California Labor & Workforce Development Agency (“LWDA”) dated February 17, 2023 and April 17, 2024 shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendants to pay the sum of One Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$1,250,000.00) for settlement of the Claims on the terms outlined in this Agreement, subject to court approval, which sum shall be all-inclusive meaning it will cover Plaintiff’s attorneys’ fees and costs, settlement administration fees, and payments to the State of California and the Aggrieved Employees, and under no condition will Defendants be obligated to pay additional sums for resolution of the Claims (the “PAGA Settlement Sum”). The Parties further agree this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

Article I.
Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Aggrieved Employees” means all current and former non-exempt or hourly-paid employees who worked for Defendants or the Released Parties (as defined below) in California, at any time during the Release Period at the following hotels: (1) Holiday Inn Los Angeles Gateway – Torrance; (2) Holiday Inn Express and Suites - San Francisco Fisherman Wharf; (3) Hotel Indigo – Los Angeles Downtown; (4) Hotel Indigo - San Diego Gaslamp Quarter; (5) InterContinental - Los Angeles Downtown; (6) InterContinental - San Diego; (7) InterContinental - San Francisco; (8) InterContinental - Mark Hopkins; (9) Regent - Santa Monica; (10) Kimpton Shorebreak Huntington Beach Resort; (11) Kimpton Everly Hotel; (12) Kimpton Hotel Wilshire; (13) Kimpton Hotel Palomar Los Angeles Beverly Hills; (14) Kimpton Rowan Palm Springs Hotel; (15) Kimpton Sawyer Hotel; (16) Kimpton Alma; (17) Kimpton Alton Hotel; (18) Kimpton Hotel Enso; (19) Kimpton Canary Hotel; and (20) Kimpton La Peer Hotel (individually “Hotel” and collectively “Hotels”).
- (b) “Claims” means all claims, causes of action, and primary rights that were alleged or could have been alleged based on the allegations set forth in the Complaint and/or PAGA Notices.
- (c) “Complaint” means the operative complaint filed in Los Angeles County Superior Court, case number 23STCV13726.
- (d) “Court” means the Superior Court for the State of California, County of Los Angeles.
- (e) “Defense Counsel” or “Counsel for Defendants” is:

Spencer C. Skeen, Esq.
Marlene M. Moffitt, Esq.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
4660 La Jolla Village Drive, Suite 900
San Diego, California 92122
- (f) “Effective Date” means the date upon which both of the following have occurred: (i) approval of the Settlement is granted by the Court, or other court assuming jurisdiction of this lawsuit, and (ii) the Court’s Judgment approving the Settlement becomes Final. “Final” shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court, or (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

- (g) “PAGA Notices” means the letters submitted on behalf of Plaintiff to the California Labor and Workforce Development Agency dated February 17, 2023 and April 17, 2024, alleging Labor Code violations against Defendants.
- (h) “Plaintiff’s Counsel” is:

Harout Messrelian, Esq.
MESSRELIAN LAW INC.
500 N. Central Ave., Suite 840
Glendale, California 91203
- (i) “Release Period” means the time period of February 17, 2022 through the date the Court enters an order and judgment approving and incorporating by reference the terms and conditions of this Agreement or June 6, 2024, whichever date is sooner.
- (j) “Settlement Administration Costs” means and shall include all costs of administering the settlement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees, State of California, Plaintiff’s Counsel, and Defendants’ Counsel; all costs and fees associated with computing, processing, reviewing, and paying payments to Aggrieved Employees; costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; and any other cost and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

Article II.
Background.

Section 2.01 Background.

- (a) On June 14, 2023, Plaintiff initiated the Action. The operative complaint is the First Amended Complaint (“Complaint”) filed by Plaintiff on April 22, 2024, which alleges one cause of action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) based on various alleged Labor Code violations. Separately, Plaintiff alleges harassment claims under the Fair Employment and Housing Act (FEHA), including sex harassment and failure to prevent harassment as well as retaliation (both under FEHA and Labor Code Section 1102.5) and wrongful termination in violation of public policy. The forum for Plaintiff’s latter non-wage claims would be arbitration. Defendants contend Plaintiff’s wage claims would also be subject to arbitration but for this Settlement, and nothing in this Settlement or seeking judicial approval of same may be construed as a waiver of Defendants’ right to enforce any arbitration agreements. Plaintiff asserts the non-wage claims as an individual and, as to the Labor Code violations, as a representative under PAGA.

- (b) Defendants deny and dispute all of the allegations in the Complaint and deny that they have committed or are liable for any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. Defendants further deny that any of their current and former employees is an “aggrieved employee” or that Defendants should be held liable to Plaintiff or any other current or former employee as alleged in the Complaint. Defendants contend that, at all times and in good faith, they properly complied with applicable law. Defendants have vigorously defended against the claims in the Complaint and, but for this Settlement, would continue to do so.
- (c) On March 8, 2024, the Parties participated in a full-day mediation with mediator Lou Marlin, an experienced and highly respected employment law mediator. The Action did not settle at mediation. However, the Parties continued their settlement discussions. With Mr. Marlin’s expert guidance, the Parties eventually negotiated a complete settlement of the Claims. The Parties’ settlement includes this PAGA Settlement Agreement and a separate individual settlement agreement that includes a general release of claims in exchange for a release payment (“Individual Settlement Agreement”).
- (d) Throughout the Action, the Parties have engaged in extensive discovery. The Parties reached this settlement only after conducting extensive investigation of the facts and law. The fact investigation included informal discovery, including the production of Defendants’ corporate practices and policies, wage statements, expense reports, time and pay records, and Plaintiff’s employment records. The Parties believe and agree this Agreement provides for a fair, adequate, and reasonable resolution of the Claims and have arrived at the Settlement after extensive, arms-length negotiations in a full-day private mediation, taking into account all relevant factors, present and potential.
- (e) The Parties and their counsel recognize the expense and length of continued proceedings necessary to litigate the disputes through trial and through any possible appeals. The Parties have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. The Parties and their counsel are aware of the burdens of proof necessary to establish liability for the claims alleged, and the affirmative and other defenses asserted. Thus, reaching this Settlement now has the potential for having a higher value today than it might have later if the Litigation were to continue. Based on the foregoing, Plaintiff has determined that the Settlement is fair and promotes PAGA’s objectives
- (f) Labor Code section 2699(*I*)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Accordingly, the Parties will seek an order from the Court approving this Agreement pursuant to California Labor Code section 2699(*I*)(2) and entering judgment incorporating by reference the terms and conditions of this Agreement.

Article III.
Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in preparing and submitting a motion for Court approval of this Settlement and obtaining an order from the Court approving the Settlement, at the earliest possible date. Nothing in this Settlement or seeking court approval of same may be construed as a waiver of Defendants' right to enforce any arbitration agreements. Prior to or concurrently therewith, Plaintiff shall also submit a copy of this Agreement to the California Labor and Workforce Development Agency ("LWDA") as required pursuant to PAGA. The Parties agree to use their best efforts to expedite the preparation and submission of the Settlement documents, within the parameters set by the mediator, Mr. Marlin. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating thereto, or that are otherwise necessary, for the approval and implementation of the payments as set forth in this Agreement.

The Court's approval of this Agreement shall be embodied in a written order and judgment, which Plaintiff shall transmit to the LWDA promptly upon entry, as required by PAGA.

Section 3.02 Escalator Clause.

Based on a review of its records, Defendants estimated there were 163,323 PAGA Pay Periods from February 17, 2022 through March 8, 2024, in connection with the claims. If, as determined by the settlement administrator, the actual number of PAGA Pay Periods for the Release Period exceeds this amount by more than ten percent (10%), then the PAGA Settlement Sum shall be increased on a proportional basis that the actual number of PAGA Pay Periods exceeds 10%. For example, if the actual number of PAGA Pay Periods during the Release Period is 11%, the PAGA Settlement Sum shall increase by 1%, in an amount to be calculated by the settlement administrator. In the alternative, Defendants may elect to shorten the Release Period to stay within the 10%.

Within 30 business days after the Court's approval of the Settlement, Defendants will provide to the Settlement Administrator a list of Aggrieved Employees, in Microsoft Office Excel, showing each individual's full name, employee ID number, last known mailing address, Social Security number, and number of PAGA Pay Periods, to aid the Settlement Administrator in preparing the Notice of PAGA Settlement and calculating the individual share of the PAGA settlement payment to Aggrieved Employees. For purposes of this Agreement, the list provided by Defendants shall be the official information to be used for this Settlement. The list of Aggrieved Employees shall be provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain its confidentiality. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

Section 3.03 Settlement Payment Procedures.

- (a) Payment of PAGA Settlement Sum and Notice to Aggrieved Employees.

- (1) Defendants agree to pay the PAGA Settlement Sum to settle, resolve, and fully discharge the Claims. The PAGA Settlement Sum is all-inclusive, meaning it shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, the Settlement Administrator, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs.
- (2) This Agreement contemplates a separate, additional settlement agreement for Plaintiff's individual claims ("Individual Settlement Agreement") in exchange for a general release of claims from Plaintiff. If the court requires an additional amount to secure court approval of this PAGA settlement, Defendants shall not be required to contribute any additional amount. Any additional amount required to secure PAGA settlement approval shall be deducted from the amounts set forth in the Individual Settlement Agreement.
- (3) The Parties agree there are no circumstances that would require Defendants to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement, except as set forth in Section 3.02 (Escalator Clause). In the event this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur as permitted herein, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants shall have no obligation to pay any of the PAGA Settlement Sum and the Parties' respective positions shall be restored to their respective positions prior to mediation. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.
- (4) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum up to 33 1/3% of the PAGA Settlement Sum (projected to be \$416,666.67) for the payment of Plaintiff's Counsel's fees; up to \$17,500.00 for the payment of Plaintiff's Counsel's costs; and up to \$19,775 for Settlement Administration Costs, all of which are subject to the Court's approval. The Net Settlement Fund is estimated to be approximately \$796,058.33. Seventy-five percent (75%) of the Net Settlement Fund, or approximately \$597,043.75, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement Fund, or approximately \$199,014.58, shall be distributed to the Aggrieved Employees. This is a non-reversionary settlement and any amount not approved by the Court including for Plaintiff's Counsel's fees or costs and/or Settlement Administration Costs, shall be added to the Net Settlement Fund for distribution as set forth herein and shall not be a basis to revoke or object to the Settlement.
- (5) Payments to Aggrieved Employees. The twenty-five percent (25%) of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided by the total number of pay periods worked by all Aggrieved Employees during the Release Period to yield the "Pay Period Value." Each Aggrieved Employee will be paid an amount equal to their individual number of pay periods worked in California during the Release Period multiplied by the Pay Period Value. A "PAGA Pay Period" is a bi-weekly pay period during the Release Period in which an Aggrieved Employee worked at least one day during the pay period.

- (6) Upon the later of thirty (30) business days after the Effective Date or fourteen (14) business days of the Settlement Administrator (defined below) establishing a qualified settlement fund ("QSF") pursuant to this Agreement, Defendants shall pay the entire PAGA Settlement Sum into the QSF established by the Settlement Administrator. Payment shall be made via wire, bank transfer, or other means acceptable to the Settlement Administrator on or before the scheduled due date. If the due date lands on a Saturday, Sunday, or holiday, the due date shall roll over to the following business day that is not a Saturday, Sunday, or holiday. The Settlement Administrator will provide to Defendants' Counsel an IRS Form W-9 for the QSF prior to their funding of the PAGA Settlement Sum.
- (7) The Settlement Administrator shall disburse court-approved amounts from the PAGA Settlement Sum to: (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff's Counsel; and (d) itself, no later than fifteen (15) business days after Defendants' deposit of the PAGA Settlement Sum. The Settlement Administrator shall transmit the "Notice of PAGA Settlement" (in substantially the same form as **Exhibit "A"** attached hereto), together with settlement checks containing their individual settlement amounts, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return those that are undeliverable. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days after their issuance. After the 180 day-period, the Settlement Administrator shall remit any unclaimed funds to the California State Controller as unclaimed property in the name of each such Aggrieved Employee, unless otherwise ordered by the Court.
- (8) All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which an IRS Form 1099 will be issued and no withholdings will be made.

Section 3.04 Settlement Administration Costs.

The Parties will retain Apex Class Action LLC as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing the QSF and issuing notices, payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel, pursuant to this Agreement and as approved by the Court. The Settlement Administration Costs shall be paid from the PAGA Settlement Sum. Settlement Administration Costs are estimated to be \$19,775.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, or as an admission by Defendants of any violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendants specifically disclaim any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of their rights, or for any alleged violation of any order, law, statute, duty or contract. Defendants further deny that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 Non-Evidentiary Use.

This Agreement is admissible for purposes of obtaining approval from the Court of the Settlement and is intended to be binding on the Parties. It is also admissible in the event either Party is required to file a motion to enforce any of the terms of the Agreement. Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding, including to establish any liability or admission on the part of Defendants or any Released Parties (defined below) or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendants or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendants specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employees.

Section 4.03 Nullification.

In the event (i) the Court does not approve this Agreement, or (ii) the Court's order and judgment approving and incorporating this Agreement does not become final, then this Agreement, and any documents generated to bring it into effect, will be null and void in their entirety and the Parties will return to their original respective positions, unless otherwise agreed upon in writing between the Parties.

Article V. **Release and Waiver of Claims.**

Section 5.01 Limited Release By LWDA, Plaintiff, and Aggrieved Employees.

Upon the Effective Date and Defendants' payment of the PAGA Settlement Sum, the LWDA and Plaintiff, on behalf of herself, her heirs, executors, and assigns, and the Aggrieved Employees, shall be deemed to have fully, finally, and forever released, relinquished, and discharged Defendants and Hotels, and each of their present and former parent companies,

subsidiaries, divisions, successors, predecessors, owners, members, assigns, and affiliates (including without limitation, InterContinental Hotels Group Resources, LLC; Intercontinental Hotels of San Francisco, Inc.; Inter-Continental Hotels Corporation; Six Continents Hotels, Inc.; KHRG Huntington Beach LLC; KHRG Argyle LLC; KHRG Wilshire LLC; KHRG Westwood LLC; KHRG NPC LLC; KHRG Sacramento LLC; KHRG Employer, LLC; KHRG SF Wharf LLC; Kimpton Hotel & Restaurant Group, LLC; KHRG Canary LLC; KHRG La Peer LLC; KHRG SFD LLC; KHRG SF Wharf U2 LLC; KHRG Sutter LLC; KHRG Sutter Union LLC; Today's V, Inc.; Summit Hotel TRS 030, LLC; Greenland LA Metropolis Hotel Development LLC; B9 Select Blue TRS LLC; Hanjin International Corp.; LFS Development, LLC; CDC San Francisco, LLC; Leadwell Global Property LLC; DTRS Santa Monica, L.L.C.; DiamondRock HB Tenant, LLC; Argyle Hotel, LLC; LA OSM Wilshire LLC; RHCP Lessee LLC; NPC Hotel, LLC; SG Downtown LLC; BSREP III SD Hotel TRS LLC; DCP SF Columbus Ave Owner LLC; KHP III SF Sutter LLC; XHR SANTA BARBARA, LLC; and La Peer Hotel Owner LLC), and each of their respective past and present shareholders, officers, partners, directors, current and former employees, agents, principals, attorneys, insurers, successors, assigns, representatives, accountants, auditors, attorneys, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, primary rights, and causes of action of every nature and description, that were asserted in the Complaint and/or PAGA Notices, or that could have been asserted in the Complaint and/or PAGA Notices, during the Release Period ("Released Claims"), including, but not limited to, claims based on alleged violations of California Labor Code §§ 201-204, 208, 210, 212, 216, 218.5, 221, 222, 223, 224, 225.5, 226, 226.3, 226.6, 226.7, 227.3, 233, 234, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 516, 551-553, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 2698-2699, 2699.3, 2802, 2804, 2810.5, and any applicable California Industrial Welfare Commission Wage Order.

There is no ability for Aggrieved Employees to object to or opt-out of the Settlement, and all Aggrieved Employees will be bound by the terms of the Settlement, including this release, upon court approval of the Settlement.

Article VI.

Miscellaneous Provisions.

Section 5.02 Voluntariness and Consultation with Counsel

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity. The Parties, and each of them, acknowledge that they have had the opportunity to consult with legal counsel of their choice prior to execution and delivery of this Agreement, and they have in fact done so. The Parties represent that they have entered into this agreement knowingly and voluntarily, after consulting with their attorneys, with a full understanding of its terms.

Section 5.03 Amendments.

This Agreement may only be modified or changed by a writing signed by the Parties hereto or by their undersigned counsel. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 5.04 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 5.05 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 5.06 Entire Agreement.

This Agreement and the Individual Settlement Agreement contain the entire understanding of the Parties hereto with respect to resolution of the Claims. This Agreement, together with the Individual Settlement Agreement, supersede any other agreements, understandings, or representations between the Parties.

Section 5.07 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 5.08 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile, pdf, or other copies of signatures of any Party hereto, including by DocuSign, shall be deemed to be an original signature for all purposes.

Section 5.09 Attorneys' Fees and Costs.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the PAGA Settlement Sum except as expressly provided herein. Defendants agrees not to contest the amount of Attorneys' Fees and Costs, provided that they are consistent with the terms of this Agreement. The Attorneys' Fees and Costs are not a material term of the Agreement. If the Court reduces the amount of Attorneys' Fees and Costs, all other terms of this Agreement shall remain in effect. Defendants shall bear its own attorney's fees and costs, and neither Plaintiff's Counsel, Aggrieved Employees, nor Plaintiff shall be responsible for Defendants's attorney's fees and costs. If any Party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other Party all attorneys' fees and costs incurred to enforce this Agreement.

Section 5.10 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, but excluding any dispute related to non-payment or late payment of the PAGA Settlement Sum, the Parties agree to submit any such dispute(s) first to mediation and/or continued negotiations before mediator Lou Marlin, and then, if unsuccessful, to the Los Angeles County Superior Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover his/her/its/their reasonable attorneys' fees and costs.

Section 5.11 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto, including Plaintiff, the State of California, the LWDA, Aggrieved Employees, and to their respective successors, assigns, legatees, heirs, and personal representatives. Although some Aggrieved Employees might not receive the notice as provided under this Agreement, due to inability to locate their current address following the procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this Agreement and the order approving the Settlement.

Section 5.12 Court's Retention of Jurisdiction.

The Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6 and otherwise as permitted by law, to enforce this Settlement.

Section 5.13 Authority.

Each Party to this Agreement expressly represents and warrants to have the authority necessary to execute this Agreement. Each person signing this Agreement on behalf of a corporation or as counsel for a Party represents that he or she has the authority to agree to the terms hereof and to execute this Agreement.

Section 5.14 Interim Stay of Proceedings.

The Parties agree to refrain from further litigation in this lawsuit, except such proceedings necessary to implement and to obtain approval of the terms of the Agreement.

Section 5.15 Stipulation to Representative Action for Settlement Purposes Only.

The Parties agree to stipulate that the representative action is appropriate for purposes of the settlement only. If, for any reason, the Settlement is not approved, the stipulation will be void, and Defendants shall have the full opportunity to file any motion to challenge liability for the PAGA claims or to challenge the manageability of PAGA claims. The Parties further agree that the stipulation is not an admission or waiver by Defendants to challenge the propriety of the PAGA claims, including whether PAGA claims are appropriate for adjudication on a representative basis.

Section 5.16 Plaintiff's Counsel's Representation.

Plaintiff's Counsel agrees and represents that they will not engage in any conduct to undermine the terms of the Agreement. The Parties agree that verifiable electronic signatures are sufficient. However, if the Court orders wet signatures, the Parties will follow the Court's Order.

Section 5.17 Parties' Authority.

The signatories hereto represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is agreed that this Agreement may be executed on behalf of the State of California and the Aggrieved Employees and by Plaintiff and Plaintiff's Counsel.

Section 5.18 No Initiated Publicity.

Plaintiff's Counsel shall not take any action or initiate to publicize, or cause to be publicized, directly or indirectly, the discussions resulting in or the existence of this settlement or its terms, in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, blogs, websites, newspapers, Internet posting, Facebook, Instagram, Twitter or any other social media, or information furnished to legal news media, including but not limited to *Bloomberg Law*, *Law 360*, and the *Daily Journal*. Plaintiff's Counsel shall not refer to Defendants by name in its public marketing materials, law firm websites, or posting with any other organizations, such as the California Employment Lawyers Association ("CELA"). Plaintiff's Counsel further agrees and warrants that if they were contacted by media outlets regarding this case, they will simply state that the lawsuit exists and has been resolved.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

[Signatures on next page(s)]

Dated: 05/09/2024, 2024

IHG MANAGEMENT (MARYLAND) LLC

By 
Rani Hammond, Senior Vice President

Dated: 05/09/2024, 2024

INTERCONTINENTAL HOTELS GROUP
RESOURCES, LLC

By 
Rani Hammond, Senior Vice President

Dated: 05/09/2024, 2024

INTERCONTINENTAL HOTELS OF SAN
FRANCISCO, INC.

By 
Rani Hammond, Senior Vice President

Dated: 05/09/2024, 2024

INTER-CONTINENTAL HOTELS
CORPORATION

By 
Rani Hammond, Senior Vice President

Dated: 05/09/2024, 2024

SIX CONTINENTS HOTELS, INC.

By 
Rani Hammond, Senior Vice President

Dated: 05/09/2024, 2024

KIMPTON HOTEL & RESTAURANT GROUP,
LLC, on behalf of itself and as sole
member respectively of KHRG Huntington
Beach LLC; KHRG Argyle LLC; KHRG
Wilshire LLC; KHRG Westwood, LLC;
KHRG NPC LLC; KHRG Sacramento LLC;
KHRG Employer, LLC; KHRG SF Wharf,
LLC; KHRG Canary LLC; KHRG La Peer
LLC; KHRG SFD LLC; KHRG SF Wharf U2
LLC; KHRG Sutter LLC; and KHRG Sutter
Union LLC

By 
Rani Hammond, its Senior Vice President

Dated: _____, 2024

By _____
ELIZABETH MORA

APPROVED AS TO FORM ONLY

Dated: _____, 2024

MESSRELIAN LAW INC.

By _____
Harout Messrelian, Esq.
Attorney for Plaintiff

Dated: 5/9/2024, 2024

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By 
Spencer C. Skeen, Esq.
Marlene M. Moffitt, Esq.
Attorneys for Defendants

Dated: _____, 2024

KIMPTON HOTEL & RESTAURANT GROUP, LLC, on behalf of itself and as sole member respectively of KHRG Huntington Beach LLC; KHRG Argyle LLC; KHRG Wilshire LLC; KHRG Westwood, LLC; KHRG NPC LLC; KHRG Sacramento LLC; KHRG Employer, LLC; KHRG SF Wharf, LLC; KHRG Canary LLC; KHRG La Peer LLC; KHRG SFD LLC; KHRG SF Wharf U2 LLC; KHRG Sutter LLC; and KHRG Sutter Union LLC

By _____

Its _____

Dated: 05/09/2024, 2024

By  _____
Elizabeth Mora (May 9, 2024 11:32 PDT)
ELIZABETH MORA

APPROVED AS TO FORM ONLY

Dated: May 9, 2024

MESSRELIAN LAW INC.

By  _____
Harout Messrelia, Esq.
Attorney for Plaintiff

Dated: _____, 2024

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By _____
Spencer C. Skeen, Esq.
Marlene M. Moffitt, Esq.
Attorneys for Defendants

EXHIBIT A

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

ELIZABETH MORA

Plaintiff,

v.

IHG MANAGEMENT (MARYLAND)
LLC, et al.

Defendants.

Case No. 23STCV13726

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 *ET SEQ.*)**

Plaintiff Elizabeth Mora (“Plaintiff”) filed a lawsuit in Los Angeles County Superior Court against Defendants IHG Management (Maryland) LLC; InterContinental Hotels Group Resources, LLC; InterContinental Hotels of San Francisco, Inc.; Inter-Continental Hotels Corporation; Six Continents Hotels, Inc.; KHRG Huntington Beach LLC; KHRG Argyle LLC; KHRG Wilshire LLC; KHRG Westwood LLC; KHRG NPC LLC; KHRG Sacramento LLC; KHRG Employer, LLC; KHRG SF Wharf LLC; Kimpton Hotel & Restaurant Group, LLC; KHRG Canary LLC; KHRG La Peer LLC; KHRG SFD LLC; KHRG SF Wharf U2 LLC; KHRG Sutter LLC; and KHRG Sutter Union LLC (collectively, “Defendants”), titled *Elizabeth Mora v. IHG Management (Maryland) LLC* Los Angeles County Superior Court, case number 23STCV13726 (the “Lawsuit”).

Plaintiff alleges various claims for which she seeks penalties under the California Labor Code’s Private Attorneys General Act of 2004, codified as Labor Code section 2698 *et seq.* (“PAGA”). Defendants deny Plaintiff’s allegations and dispute all of Plaintiff’s claims.

Plaintiff and Defendants entered into a settlement that includes them, the State of California, and all allegedly aggrieved employees from February 17, 2022 to [RELEASE PERIOD END DATE]. The Court has not made a decision that there was unlawful conduct but has approved the settlement to a select group of employees. The enclosed check is your portion of the settlement.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement. If you have any questions, you may call or write the Settlement Administrator, at the following number or address: [INSERT].

EXHIBIT 2

APEX

CLASS ACTION ADMINISTRATION

Quotation Request:

Marlene M. Moffitt
Ogletree Deakins
marlene.moffitt@ogletree.com>
858.652.3110

Case Name:

Date:
RFP Number:

Elizabeth Mora v. IHG Management LLC

Monday, April 1, 2024
4954001

Prepared By:

Nick Day
Apex Class Action LLC
nick@apexclassaction.com
949.563.6650

Settlement Specifications

Number of Aggrieved Employees	5,300
Certified Language Translation:	Yes
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	4	\$500.00
Data Analyst	Per Hour	\$150.00	4	\$600.00

*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.

Sub Total: \$1,100.00

Project Management

Project Management	Per Hour	\$150.00	3	\$450.00
Project Coordinator	Per Hour	\$90.00	3	\$270.00
Data Analyst and Reporting	Per Hour	\$140.00	3	\$420.00

Sub Total: \$1,140.00

Toll-Free Contact Center, Website, Reporting & Pre-Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$750.00	1	\$750.00
NCOA Address Update (USPS)	Static Rate	\$922.00	1	\$922.00
Certified Language Translation: Spanish	Static Rate	\$750.00	1	\$750.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived

Sub Total: \$2,542.00

APEX

CLASS ACTION ADMINISTRATION

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Distribution & Settlement Fund Management				
Settlement Calculations	Per Hour	\$120.00	3	\$360.00
Account Management and Reconciliation	Per Hour	\$140.00	4	\$560.00
Print & Mail Distribution Settlement Check (IRS Form 1099 if applicable)	Per Piece	\$1.00	5,300	\$5,300.00
USPS First Class Postage	Per Piece	\$0.61	5,300	\$3,233.00
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	1,060	\$1,590.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$500.00	1	\$500.00
Sub Total:				\$13,593.00
Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	4	\$540.00
Project Management Reconciliation	Per Hour	\$100.00	5	\$500.00
Declarations	Per Hour	\$120.00	3	\$360.00
Sub Total:				\$1,400.00
WILL NOT EXCEED:				\$19,775.00

Thank you for your business!

APEX

CLASS ACTION ADMINISTRATION

Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this confidentiality may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT 3