

EXHIBIT A
to Declaration of J. Garay

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12 LLC

13 *[additional counsel on the following page]*

14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 TERESA GARCIA, an individual, on
behalf of herself and others similarly
19 situated,

20 Plaintiff,

21 v.

22 ISLAND HOSPITALITY
MANAGEMENT III, LLC, a Delaware
23 corporation; and, DOES 1 through 50,
inclusive,

24 Defendants.
25
26
27
28

Case No. 8:24-cv-00583-DOC-ADS

[CLASS ACTION]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: September 6, 2023

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on behalf of herself and others similarly situated
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1 This Joint Stipulation of Class Action Settlement Agreement and Release of
 2 Claims (“Agreement”) is made and entered into between: (1) Plaintiff Teresa Garcia
 3 (“Plaintiff”), individually and on behalf of all current and former non-exempt, hourly
 4 employees working for Defendant Island Hospitality Management III, LLC
 5 (“Defendant”) (collectively, the “Parties”) at any time between September 6, 2019
 6 through the date the Court enters a Preliminary Approval Order (the “Class”); and
 7 (2) Defendant, subject to approval from the Court, as provided below.

8 This Agreement is intended by the Parties to fully, finally, and forever resolve,
 9 discharge, and settle the Action (as defined below) and the Released Claims (as defined
 10 below), upon and subject to the terms and conditions hereof, as follows:

11 1. DEFINITIONS

12 As used herein, for the purposes of this Agreement only, the following terms shall
 13 be defined as set forth below:

14 1.1. **“Action”** refers to the civil action entitled: (i) *Teresa Garcia v. Island*
 15 *Hospitality Management III, LLC* filed as Case No. 30-2023-01347951-CU-OE-CXC in
 16 Orange County Superior Court on September 6, 2023, which was removed to the United
 17 States District Court for the Central District of California as Case No. 8:24-cv-00583-
 18 DOC-ADS.

19 1.2. **“Agreement”** refers to this Joint Stipulation of Class Action
 20 Settlement Agreement and Release of Claims, which includes all of the Recitals and the
 21 Exhibits attached hereto.

22 1.3. **“Class”** refers to all current and former non-exempt, hourly
 23 employees working for Defendant in California at any time between September 6, 2019
 24 through the date the Court enters a Preliminary Approval Order.

25 1.4. **“Class Counsel”** refers to Jose Garay of Jose Garay, APLC. For
 26 purposes of providing any notices required under this Agreement, Class Counsel shall
 27 refer to Jose Garay (jose@garaylaw.com), 249 E. Ocean Blvd., #814, Long Beach,
 28 California 90802.

1 1.5. **“Class Member(s)”** refers to any individual that is a member of the
2 Class.

3 1.6. **“Class Period”** refers to the period of September 6, 2019 through the
4 date the Court enters a Preliminary Approval Order, as defined in this Agreement.

5 1.7. **“Class Representative”** refers to the named Plaintiff in the Action,
6 Teresa Garcia.

7 1.8. **“Class Representative Incentive Payment”** refers to any payment,
8 subject to Court approval, to the Class Representative from the Gross Settlement Amount
9 in recognition of the efforts and work in prosecuting the Action on behalf of the Class
10 Members and in exchange for a general release.

11 1.9. **“Complaint”** refers to the original class action Complaint filed on
12 September 6, 2023; and the First Amended Complaint that will be filed in this Action
13 pursuant to this Agreement, as described in Section 2.6 below, and attached hereto as
14 **Exhibit C.**

15 1.10. **“Weeks Worked”** refers to any weeks when a Class Member worked
16 for Defendant during the Class Period, as reflected on Defendant’s records.

17 1.11. **“Defendant”** refers to Defendant Island Hospitality Management III,
18 LLC.

19 1.12. **“Defendant’s Counsel”** refers to Seyfarth Shaw LLP. For purposes
20 of providing any notices required under this Agreement, Defendant’s Counsel shall refer
21 to Brian T. Ashe (bashe@seyfarth.com), Michael Afar (mafar@seyfarth.com), Bailey K.
22 Bifoss (bbifoss@seyfarth.com), and Miguel A. Ramirez (mramirez@seyfarth.com);
23 Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067.

24 1.13. **“Effective Date”** refers to the 30th calendar day after the date by
25 which the last of the following has occurred: (a) all conditions of Settlement have been
26 satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and
27 (c) the time period for appeal of the Judgment has been exhausted without any appeals
28 having been filed, and/or all such appeals have been voluntarily or involuntarily

1 dismissed, and/or the appropriate appellate court or courts have entered a final judgment
2 affirming the Final Approval Order and Judgment of the Court and the final judgment of
3 such appellate court or courts is no longer subject to any further appellate challenge or
4 procedure.

5 1.14. **“Final Approval Order”** refers to the final order by the Court
6 approving the Settlement following the Final Fairness Hearing.

7 1.15. **“Final Fairness Hearing”** refers to the hearing at which the Court
8 will make a final determination whether the terms of the Agreement are fair, reasonable,
9 and adequate for the Class and meet all applicable requirements for Final Approval.

10 1.16. **“Gross Settlement Amount”** refers to the maximum settlement
11 payment Defendant may be obligated to make in connection with the Settlement or
12 Agreement, which in this case is no more than \$140,000. This sum shall include all
13 Individual Settlement Payments made to Class Members, all administration costs, the
14 employees’ share of payroll taxes, the Class Representative Incentive Payment, the
15 LWDA Payment (as defined below), interest, and attorneys’ fees and costs as set forth
16 below. The Gross Settlement Amount shall not include the employer’s share of payroll
17 taxes in connection with the wage-related portions of the Individual Settlement Payments
18 to Class Members. Defendant will separately pay the employer’s share of the payroll
19 taxes in connection with the wage-related portions of the Individual Settlement Payments
20 to Class Members.

21 The Gross Settlement Amount is a material term of this Agreement. To the
22 extent Plaintiff or the Court seeks to require Defendant to pay more than the Gross
23 Settlement Amount as part of this Settlement or Agreement, Defendant shall retain the
24 right, in the exercise of its sole discretion, to nullify the Settlement or Agreement.

25 1.17. **“Individual Settlement Payment”** refers to the amount calculated by
26 the Settlement Administrator to be distributed to each individual Class Member, based on
27 Weeks Worked. The Individual Settlement Payment shall be paid from the Net
28

1 Settlement Amount and shall include the employee's share of payroll taxes and
2 withholdings.

3 1.18. **"Judgment"** refers to the final judgment by the Court approving the
4 Settlement.

5 1.19. **"LWDA Payment"** refers to a payment out of the Gross Settlement
6 Amount of \$4,000, which shall be allocated as \$3,000 to the California Labor &
7 Workforce Development Agency ("LWDA") as the LWDA's share of the settlement of
8 civil penalties paid under this Agreement pursuant to the PAGA, and as \$1,000 to the Net
9 Settlement Amount for distribution to the Class Members.

10 1.20. **"Net Settlement Amount"** refers to the Gross Settlement Amount
11 minus all Settlement Administration Costs, the Class Representative Incentive Payment,
12 the LWDA Payment, and attorneys' fees and costs. The Net Settlement Amount shall
13 include all Individual Settlement Payments due to Class Members, including the
14 employees' share of payroll taxes. The Net Settlement Amount is the maximum amount
15 that shall be available for distribution to Class Members.

16 The Net Settlement Amount is a material term of this Agreement. To the
17 extent Plaintiff or the Court seeks to require Defendant to pay more than the Net
18 Settlement as part of this Settlement or Agreement, Defendant shall retain the right, in the
19 exercise of its sole discretion, to nullify the Settlement or Agreement.

20 1.21. **"Notice of Class Action Settlement"** refers to the Notice of Class
21 Action Settlement, substantially in the form attached as **Exhibit A**.

22 1.22. **"Objection"** refers to a timely, written, signed objection by a Class
23 Member who elects to object to the Settlement, substantially in the form detailed in the
24 Notice of Class Action Settlement.

25 1.23. **"Parties"** refer to (1) Plaintiff Teresa Garcia, individually and on
26 behalf of all current and former non-exempt, hourly employees working for Defendant in
27 California at any time between September 6, 2019 through the date the Court enters a
28

1 Preliminary Approval Order; and, (2) Defendant Island Hospitality Management III,
2 LLC.

3 1.24. **“Plaintiff”** refers to Teresa Garcia.

4 1.25. **“Preliminary Approval Order”** refers to the order issued and
5 entered by the Court following a Motion for Preliminary Approval of the Settlement and
6 this Agreement.

7 1.26. **“Released Claims”** refers to those claims defined in Section 6 of this
8 Agreement. The Released Claims shall apply to all Class Members who do not file a
9 Request for Exclusion (as defined in this Agreement). The scope of the Released Claims
10 is a material term of this Agreement. To the extent Plaintiff or the Court seeks to modify
11 the scope of the Released Claims in order to make it more narrow, Defendant shall retain
12 the right, in the exercise of its sole discretion, to nullify the Settlement or Agreement.

13 1.27. **“Released Parties”** refers to (i) Defendant Island Hospitality
14 Management III, LLC; (ii) each of Defendant’s respective past, present and future
15 parents, subsidiaries, and affiliates including, without limitation, any corporation, limited
16 liability company, partnership, affiliated entity, trust, foundation, and non-profit entity
17 which controls, is controlled by, or is under common control with Defendant, including
18 Island Hospitality Management LLC, Island Hospitality Management II LLC, Island
19 Hospitality Management III LLC, and Island Hospitality Management IV LLC; (iii) the
20 past, present and future shareholders, directors, officers, agents, employees, attorneys,
21 insurers, members, partners, managers, contractors, agents, consultants, representatives,
22 administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and
23 assigns of any of the foregoing; and (iv) any individual or entity which could be jointly
24 liable with any of the foregoing.

25 1.28. **“Request for Exclusion”** refers to a timely, written, signed opt-out
26 request by someone who otherwise would be a Class Member who elects to be excluded
27 from the Class, substantially in the form attached as **Exhibit B** to this Agreement.
28

1 1.29. “**Settlement**” refers to terms of this Agreement, which includes the
2 Recitals and the Exhibits attached hereto.

3 1.30. “**Settlement Administrator**” refers to the third party administrator,
4 who has been mutually selected by the Parties, subject to Court approval, to perform the
5 notice, claims administration, and distribution of payment functions further described in
6 this Agreement. The Settlement Administrator shall establish its own employer
7 identification number and file an Internal Revenue Service Form W-9. The Settlement
8 Administrator shall meet all of the requirements to establish a Qualified Settlement Fund
9 (“QSF”) pursuant to U.S. Treasury Regulation Section 468B-1.

10 1.31. “**Settlement Class**” refers to all Class Members who do not file a
11 timely and valid opt-out Request for Exclusion.

12 2. PROCEDURAL HISTORY AND RECITALS

13 2.1. **Causes Of Action.** On September 6, 2023, Plaintiff filed her original
14 class action complaint against Defendant on behalf of the Class. On March 19, 2024,
15 Defendant removed the original complaint to federal court based on jurisdiction under the
16 Class Action Fairness Act. Plaintiff asserts eight causes of action in the Complaint
17 against Defendant: “(1) Failure to Pay All Wages Including Minimum and Overtime
18 Wages §§ 204, 206, 226.2, 226.8, 227.3, 510, 1182.12, 1194, 1194.2, 1197; (2) Failure to
19 Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and Wage Order 5-2001,
20 § 11; (3) Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and Wage
21 Order 5-2001, § 12; (4) Failure to Reimburse for Necessary Business Expenditures;
22 Labor Code § 2802; (5) Failure to Provide Accurate Itemized Wage Statements in
23 Violation of Labor Code §§ 226, 226.3, and 1174; (6) Waiting Time Penalties; (7)
24 Violation of California’s Quota Laws, Labor Code §§ 2100, *et seq.*; and (8) Unfair
25 Business Practices in Violation of Cal. Bus. & Prof Code §§ 17200, *et seq.*” The class
26 action complain seeks unpaid wages, actual damages, statutory damages, monetary
27 damages, interest, statutory penalties, civil penalties, liquidated damages, restitution, pre-
28 judgment and post- interest, injunctive relief, and attorneys’ fees and costs.

1 **2.2. The Parties Have Engaged In Informal Settlement Discussions To**
2 **Fully Assess The Claims.** Prior to and during the April 15, 2024 Scheduling Conference
3 in this Action, the Parties engaged in extensive informal settlement negotiations and
4 exchange of information regarding the theories of liability asserted by Plaintiff as to her
5 own individual experiences and those of the Class. Prior to the April 15, 2024 Scheduling
6 Conference, Class Counsel requested an informal production of attestation demonstrative
7 videos, which depicted the attestation procedures of Defendant. Defendant agreed to
8 produce, and did produce, various attestation demonstrative videos, which showed that
9 Defendant's attestation process for meal and rest periods permitted Class Members to
10 accurately state whether they were or were not provided meal and rest periods. At the
11 April 15, 2024 Scheduling Conference, the Court ordered to Parties to engage in
12 extensive settlement discussions, which occurred in conference over the course of nearly
13 eight hours. The Parties discussed the scope and size of the putative class members, and
14 discussed Defendant's compliant policies, procedures, and practices. Class Counsel also
15 raised a new theory underlying the Class Representative's pending Labor Code section
16 2802 expense reimbursement claim and informally demonstrated work-related text
17 messages allegedly exchanged during work hours with supervisors. Defendant shared
18 information demonstrating that any such expenses were neither necessary nor reasonable,
19 and thus not reimbursable under California law. Following additional guidance and
20 orders from the Court to continue settlement discussion, the Parties engaged in
21 meaningful settlement discussions that yielded an agreement in principal at the April 15,
22 2024 Scheduling Conference.

23 **2.3. Class Counsel's Investigation.** Class Counsel investigated the claims
24 against Defendant in the Action and also analyzed all applicable defenses raised by
25 Defendant. The investigation included review of attestation demonstrative videos and
26 work-related text messages the Class Representative claims to have exchanged with
27 supervisors during work hours, as well as all of the Class Representative's time punch
28 records and payroll records. Class Counsel also reviewed information from Defendant

1 regarding the size of the Class and the number of workweeks potentially at issue. The
2 investigation also included several conferences between Class Counsel and Defendant's
3 Counsel, before the Court at the April 15, 2024 Scheduling Conference, and Class
4 Counsel's further interviews of the Class Representative and other Class Members, as
5 well as a review of documents provided by the Class Representative and other Class
6 Members.

7 **2.4. Defendant's Denials.** Defendant denied and continues to deny: (a) all
8 of the allegations made by the Class Representative or the Class in the Action; (b) that
9 they violated any applicable laws; (c) that they are liable or owe damages, penalties, or
10 other compensation or remedies to anyone with respect to the alleged facts or claims
11 asserted in the Action; and, (d) that class certification or representative treatment of the
12 Action or any alleged claim is proper. Defendant emphasizes that the Court has not made
13 any findings of liability as to Defendant and the Court has not determined that class
14 certification is warranted in this Action.

15 Nonetheless, without admitting or conceding any liability or wrongdoing
16 whatsoever and without admitting or conceding that class certification or representative
17 treatment is appropriate for any purpose other than settlement purposes alone, Defendant
18 has agreed to settle the Action on the terms and conditions set forth in this Agreement, to
19 avoid the burden, expense, and uncertainty of continuing the Action. Any stipulations or
20 statements by Defendant contained in this Agreement are made for settlement purposes
21 only.

22 **2.5. Class Counsel's Evaluation.** Based on Class Counsel's investigation
23 and evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement
24 are fair, reasonable, adequate, and in the best interest of the Class Members. Class
25 Counsel diligently and effectively investigated Plaintiff's claims, drafted the Complaint
26 and subsequent Amended Complaint, interviewed witnesses, reviewed and analyzed
27 Plaintiff's time punch records and payroll records, as well as a review of documents
28 provided by the Class Representative and other Class Members and demonstrative videos

1 of Defendant's attestation procedures. Class Counsel concluded that the Settlement
2 reflected in this Agreement is in the best interests of the Class, after reviewing the
3 aforementioned documents and information, completing interviews with potential Class
4 Members, discussing Defendant's policies, conferring with Defendant's Counsel
5 regarding Defendant's arguments in opposition to a potential Motion for Class
6 Certification, and evaluating the risk that further litigation might result in Plaintiff and the
7 Class not recovering anything at all was a very significant factor in determining that this
8 Agreement is fair, reasonable, and adequate.

9 **2.6. First Amended Complaint.** As a condition of the Settlement,
10 Plaintiff will file a First Amended Complaint to: (1) add PAGA claims that were raised in
11 Plaintiff's LWDA letter dated June 26, 2023, but which had not yet been formally added
12 to the pending Complaint; and (2) to add additional facts to the existing Labor Code
13 section 2802 cause of action regarding the use of cell phones, in order to meet the
14 required standards under *Twombly/Iqbal*. A draft of the proposed First Amended
15 Complaint is attached hereto as **Exhibit C**. Defendant will not be required to file an
16 answer or other responsive pleading to the First Amended Complaint. If, for any reason,
17 the Court does not grant Final Approval, or if the Settlement or Judgment does not
18 become binding for any reason, then the First Amended Complaint will be deemed
19 withdrawn and the original Complaint, filed September 6, 2023, will again become the
20 operative Complaint without prejudice to Plaintiff's right to seek leave to file an amended
21 complaint. Defendant does not impliedly or expressly waive any arguments or defenses
22 to the First Amended Complaint.

23 **2.7. The Parties' Intent.** It is the desire of the Parties to fully, finally, and
24 forever settle, compromise, and discharge any and all claims, rights, demands, charges,
25 complaints, causes of action, obligations or liability of any and every kind that were or
26 could have been asserted in the Action, to the extent that such claims arise out of the
27 alleged facts, circumstances, and occurrences underlying the allegations as set forth in the
28 claims in the operative First Amended Complaint in the Action.

1 **2.8. Certification of Settlement Classes.** This Agreement is contingent
2 upon approval of class certification under Fed. R. Civ. P. Rule 23 by the Court of the
3 Settlement Class for settlement purposes only. Defendant does not waive, and instead
4 expressly reserves, its right to challenge the propriety of class certification, or
5 representative treatment for any other purpose should the Court not approve the
6 Settlement or this Agreement.

7 **2.9. The Parties' Agreement to Cooperate.** The Parties agree to
8 cooperate and to take all steps necessary and appropriate to effectuate all aspects of this
9 Agreement, to obtain a Preliminary Approval Order and Final Approval Order of this
10 Settlement, and to dismiss the Action and claims of Class Members with prejudice upon
11 final approval.

12 **NOW THEREFORE**, in consideration of the covenants and agreements set forth
13 herein, and of the release and dismissal of all Released Claims, the Parties stipulate and
14 agree to the terms and provisions of this Settlement and Agreement, subject to the
15 approval of the Court.

16 **3. NOTICE TO CLASS MEMBERS**

17 **3.1. Settlement Administrator.** The Parties request that the Court
18 appoint Phoenix Class Action Administrative Solutions as Settlement Administrator. The
19 Parties agree that Settlement Administration Costs shall not exceed \$13,000, based on a
20 written bid received from the Settlement Administrator. All disputes relating to the
21 Settlement Administrator's performance of its duties, after good-faith efforts by the
22 Parties to first resolve such disputes, will be referred to the Court, if necessary, which
23 will have continuing jurisdiction over this Agreement until all payments and obligations
24 contemplated by this Agreement have been fully completed.

25 **3.2. Class Data For Settlement Administrator.** Within 21 calendar days
26 of the entry of a Preliminary Approval Order of this Agreement, Defendant shall provide
27 to the Settlement Administrator with the following information: (1) name of each Class
28 Member; (2) most current known address of each Class Member; (3) social security

1 number of each Class Member; and (4) the dates of employment for each Class Member
2 and/or weeks worked by each Class Member, in order to determine the total number of
3 Weeks Worked by each Class Member during the Class Period.

4 **3.3. Confidentiality Of Class Member Contact Information And Data.**

5 The contact information is being provided confidentially, and the Settlement
6 Administrator shall treat the information as private and confidential and take all
7 necessary precautions to maintain the confidentiality of contact information of the Class
8 Member. This information is to be used only to carry out the Settlement Administrator's
9 duties as specified in this Settlement Agreement. The Settlement Administrator shall
10 return the class data to Defendant or confirm its destruction upon completion of the
11 Settlement Administrator's duties in administering the Settlement.

12 **3.4. Mailing Of Notice Of Class Action Settlement And Request For**

13 **Exclusion.** The Settlement Administrator shall mail the Notice of Class Action
14 Settlement, and Request for Exclusion, to Class Members within 14 calendar days of
15 receiving the Class Member data from Defendant. The Settlement Administrator shall
16 send the Notice of Class Action Settlement, and Request for Exclusion to Class Members
17 via First Class U.S. Mail, using the most current, known mailing address for each Class
18 Member based on information provided by Defendant. Upon receipt of this information
19 from Defendant, the Settlement Administrator shall perform a search based on the
20 National Change of Address Database maintained by the United States Postal Service to
21 update and correct any known or identifiable address changes.

22 **3.4.1 Re-mailing Of Returned Notices.** Any mailing returned to the

23 Settlement Administrator as undeliverable shall be sent within 3 business days via First
24 Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is
25 provided, the Settlement Administrator shall attempt to determine the correct address by
26 again using the National Change of Address Database maintained by the United States
27 Postal Service to update and correct any known or identifiable address changes.

28 Following this procedure, the Settlement Administrator shall perform a single re-mailing

via First Class U.S. Mail within 3 business days.

3.4.2 Content Of The Notice Of Class Action Settlement. The Notice of Class Action Settlement shall be substantially in the form attached as **Exhibit A** to this Agreement.

3.4.3 Content Of The Request For Exclusion. The Request for Exclusion shall be substantially in the form attached as **Exhibit B** to this Agreement.

3.5. Proof Of Mailing. At least 14 calendar days prior to the Final Fairness Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing with regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defendant's Counsel, which they shall in turn provide to the Court.

4. CLASS MEMBERS' OPTIONS TO RESPOND

4.1. Class Members' Consideration Period. Class Members shall be provided 45 calendar days to exercise any rights with regard to the Settlement, following the postmark date of the initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. Except as specifically provided herein, no Class Member responses of any kind that are postmarked more than 45 calendar days after the initial mailing of Class Notice shall be considered. Responses from Class Members must be postmarked for mail with the U.S. Postal Service. Responses sent by facsimile, email, or other forms of electronic transmission will not be considered.

4.2. Request for Exclusion and Opt Out Rights. Class Members shall be given the opportunity to opt out of the Settlement.

4.2.1 Opt Out Procedures. Class Members may opt out of the Settlement by mailing to the Settlement Administrator a Request for Exclusion, substantially in the form attached as **Exhibit B**. Any such Request for Exclusion must be postmarked not more than 45 calendar days after the postmark date of the initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. To be a valid Request for Exclusion, a Class Member must provide their name (and former names, if

any), current address, and current telephone number. Any Request for Exclusion that does not include all of the required information or that is not submitted in a timely manner will be deemed null, void, and ineffective. If there is a dispute regarding the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make the determination, after consultation with Class Counsel and Counsel for Defendant. Requests for Exclusion from Class Members must be postmarked for mail with the U.S. Postal Service. Requests for Exclusion sent by facsimile, email, or other forms of electronic transmission will not be considered.

4.2.2 Effect of Opt Out. Any Class Member who opts out of the Settlement may not object to the Settlement, shall not receive any Individual Settlement Payment, and shall not be bound by the Released Claims provisions in this Agreement. If a Class Member submits both a Request for Exclusion and an Objection, the Class Member's Objection will be valid and be deemed to invalidate the Request for Exclusion.

Each Class Member who does not opt out of the Settlement shall be bound by the applicable Released Claims provisions in this Agreement, including the Released Claims.

The LWDA Payment portion of the Gross Settlement Amount shall be distributed to Aggrieved Employees based on number of workweeks worked during the PAGA period, defined as July 3, 2022 through the date the Court enters a Preliminary Approval Order. Class Members who opt out of the class portion of the Settlement and worked during the PAGA period will receive their respective share of the LWDA Payment, even if they opt out of the class portion, because there are no opt-out rights under PAGA.

4.2.3 Defendant's Rights to Withdraw. Defendant has the right, at its sole option, to withdraw from this Settlement or Agreement if the number of Class Members opting out exceeds three percent (3%) of the total number of Class Members. Defendant agrees to notify Class Counsel of any such decision no later than ten (10) calendar days following the opt-out deadline. These rights to withdraw are material terms

1 of the Agreement and Defendant has the right, at its sole option, to withdraw from this
2 Agreement if either of these material terms are not approved by the Court. If Defendant
3 exercises this right to withdraw, it will be responsible for all Settlement Administration
4 Costs incurred by the Administrator.

5 **4.3. Objection Rights.** Because the Settlement Class will be certified by
6 the Court, only Class Members who do not opt out of the Settlement shall be entitled to
7 object to the terms of the Settlement.

8 **4.3.1 Objection Procedures.** Class Members' objections to the
9 Settlement or this Agreement must be made using the procedures set forth in the Notice
10 of Class Action Settlement. Any Objection must be sent to the Settlement Administrator
11 and postmarked no later than 45 days after the first postmark date of mailing the Notice
12 of Class Action Settlement. An Objection shall be deemed to be submitted as of the
13 postmarked date. The written Objection must contain: (1) the name and case number of
14 this lawsuit, *Teresa Garcia v. Island Hospitality Management III, LLC*, United States
15 District Court for the Central District of California, Case No. 8:24-cv-00583-DOC-ADS;
16 (2) the full name, last four digits of their Social Security Number, and current address of
17 the Class Member making the Objection; (3) the specific reason(s) for the Objection; and
18 (4) any and all evidence and supporting papers (including, without limitation, all briefs,
19 written evidence, and declarations) for the Court to consider. Class Members who submit
20 an Objection remain bound by this Agreement.

21 Objections from Class Members must be postmarked for mail with the
22 U.S. Postal Service. Objections sent by facsimile, email, or other forms of electronic
23 transmission will not be considered.

24 **4.3.2 Rights of Individuals Who Submit an Objection.** Class
25 Members who timely submit an Objection shall have the right to appear at the Final
26 Fairness Hearing either in person or through counsel, but must state their intent to do so
27 at the time they submit their written Objection. Class Members may withdraw their
28 Objections at any time.

1 **4.3.3 Waiver of Objection Rights.** Class Members who fail to make
2 Objections in the manner specified in the Notice of Class Action Settlement shall be
3 deemed to have waived any Objections and shall be foreclosed from making any
4 Objection, whether by appeal or otherwise, to this Agreement.

5 **4.4. Proof of Class Members' Responses.** By no later than 75 calendar
6 days after the initial mailing of the Notice of Class Action Settlement and Request for
7 Exclusion, the Settlement Administrator will prepare and submit a declaration attesting to
8 (by number of relevant individuals) its mailing of the Notice of Class Action Settlement,
9 its inability to deliver any mailing due to invalid addresses, and its receipt of valid
10 Requests for Exclusion. If needed, fourteen (14) calendar days prior to the Final Fairness
11 Hearing, the Settlement Administrator will prepare a supplemental declaration to submit
12 to the Court, to indicate the number of valid timely claims, objections, and opt out
13 Requests for Exclusion.

14 **4.5. Binding Effect of Settlement.** Although some Class Members might
15 not receive or timely submit the Notice of Class Action Settlement or the Request for
16 Exclusion, as provided under this Settlement and Agreement, due to inability to locate
17 their current address following the procedures set forth in this Agreement, such
18 individuals shall nonetheless be bound by all of the terms of this Settlement and
19 Agreement and the Final Order and Dismissal with Prejudice.

20 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

21 **5.1. Gross Settlement Amount.** Defendant agrees to pay up to a
22 maximum Gross Settlement Amount of \$140,000. The \$140,000 Gross Settlement
23 Amount refers to the maximum settlement payment Defendant may be obligated to make
24 in connection with the Settlement or Agreement, and shall include all Individual
25 Settlement Payments made to Class Members, all administration costs, the employees'
26 share of payroll taxes, the Class Representative Incentive Payment, the LWDA Payment,
27 and attorneys' fees and costs. The Gross Settlement Amount shall be funded within thirty
28 (30) calendar days after the Effective Date.

1 **5.2. Representation of Workweeks.** Defendant has represented that the
2 workweeks between September 6, 2019, through the date of removal of this matter to
3 United States District Court, Central District of California, are approximately 65,334.

4 **5.3. Attorneys' Fees and Costs.** Class Counsel intends to request—and
5 Defendant agrees not to oppose—that the Court approve an attorneys' fees and costs
6 award for (a) attorneys' fees in an amount up to 25% of the Gross Settlement Amount (or
7 \$35,000) and (b) actual verified costs in the amount of up to \$3,000, supported by
8 adequate documentation by Class Counsel. Except as provided in this Agreement,
9 Defendant shall have no liability for any other attorneys' fees or costs.

10 **5.3.1 Approval of Attorneys' Fees and Costs Award Not**
11 **Material.** The Court's approval of an attorneys' fees or costs award is not a material
12 term of the Settlement or this Agreement. If the Court does not approve or approves only
13 a lesser amount than that requested by Class Counsel for attorneys' fees or costs, the
14 other terms of the Settlement and this Agreement shall still apply. The Court's refusal to
15 approve the attorneys' fees or costs award requested by Class Counsel does not give the
16 Class Representative, the Class Members, or Class Counsel any basis to abrogate the
17 Settlement or this Agreement. Any amount of an attorneys' fees and costs award
18 requested by Class Counsel but unapproved by the Court shall be allocated to the Net
19 Settlement Amount.

20 **5.3.2 Timing of Payment of Attorneys' Fees and Costs.** The
21 Settlement Administrator shall pay to Class Counsel any approved attorneys' fees and
22 costs award thirty (30) calendar days after the full funding of the Gross Settlement
23 Amount as set forth in Section 5.1. Class Counsel agrees that Class Counsel is
24 responsible for allocating this payment among themselves and any other counsel for
25 Plaintiff settling claims through this Agreement. The Settlement Administrator shall issue
26 an Internal Revenue Service Form 1099 to Class Counsel for any attorneys' fees and
27 costs award payment. Class Counsel shall be solely and legally responsible for paying all
28 applicable taxes on any attorneys' fees and costs award payments and shall indemnify

1 and hold harmless Defendant from any claim or liability for taxes, penalties, or interest
2 arising as a result of the payment.

3 **5.4. Class Representative Incentive Payment.** Class Counsel intends to
4 request—and Defendant agrees not to oppose—that the Court approve a Class
5 Representative Incentive Payment of up to \$5,000 for the Class Representative, for her
6 additional participation in the Action and a full individual settlement and release (as
7 outlined in Section 6.2), and such payments shall not be subject to payroll taxes or
8 withholdings. The Class Representative Incentive Payment is in addition to the Class
9 Representative’s Individual Settlement Payment.

10 **5.4.1 Class Representative Incentive Payment Not Material.** The
11 Court’s approval of the Class Representative Incentive Payment is not a material term of
12 the Settlement or this Agreement. If the Court does not approve or approves only a lesser
13 amount than that requested by Class Counsel for the Class Representative Incentive
14 Payment, the other terms of the Settlement and this Agreement shall apply. The Court’s
15 refusal to approve the Class Representative Incentive Payment requested by Class
16 Counsel does not give either the Class Representative or Class Counsel any basis to
17 abrogate the Settlement or this Agreement. Any amount of a Class Representative
18 Incentive Payment requested by Class Counsel but unapproved by the Court shall be
19 allocated to the Net Settlement Amount.

20 **5.4.2 Timing of Class Representative Incentive Payment.** The
21 Settlement Administrator shall pay to the Class Representative any approved Class
22 Representative Incentive Payment thirty (30) calendar days after the initial funding of the
23 Gross Settlement Amount set forth in Section 5.1. The Settlement Administrator shall
24 issue an IRS Form 1099 to the Class Representative for any Class Representative
25 Incentive Payment. The Class Representative shall be solely and legally responsible for
26 paying all applicable taxes on any Class Representative Incentive Payment and shall
27 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or
28 interest arising as a result of the payment.

1 **5.5. Settlement Administration Costs.** Class Counsel intends to
2 request—and Defendant agrees not to oppose—that the Court approve Settlement
3 Administration Costs of up to \$13,000. Upon completion of administration of the
4 Settlement, the Settlement Administrator shall provide written certification of such
5 completion to Class Counsel and Defendant’s Counsel. The Parties agree to cooperate in
6 the settlement administration process and to make all reasonable efforts to control and to
7 minimize Settlement Administration Costs.

8 **5.6. LWDA Payment.** The Parties will seek approval for a Private
9 Attorneys General Act (“PAGA”) payment out of the Gross Settlement Amount of
10 \$4,000, which shall be allocated: as (1) \$3,000 to the LWDA as the LWDA’s share of the
11 settlement of civil penalties paid under this Agreement pursuant to the PAGA; and (2) as
12 \$1,000 to the Net Settlement Amount for distribution to Aggrieved Employees based on
13 number of work weeks worked during the PAGA period, defined as July 3, 2022 through
14 the date the Court enters a Preliminary Approval Order.

15 **5.6.1 Modification Of LWDA Payment Not Material.** The Court’s
16 reduction or increase of a LWDA Payment is not a material term of the Settlement or this
17 Agreement. If the Court approves only a lesser amount or a higher amount than that
18 requested by Class Counsel for the LWDA Payment, the other terms of the Settlement
19 and this Agreement shall apply. The Court’s reduction or increase of the LWDA Payment
20 requested by Class Counsel does not give the Class Representative or Class Counsel any
21 basis to abrogate the Settlement or this Agreement.

22 However, the Court’s approval of a LWDA Payment is a material
23 term of the Settlement or this Agreement. If the Court does not approve a LWDA
24 Payment set forth in this Agreement, then the LWDA Payment shall be made in the
25 amount required by the Court. If the Court requires the LWDA Payment to be higher than
26 as stated in this Agreement, the additional funds for the LWDA Payment shall be taken
27 from the Gross Settlement Amount. Thus, the Gross Settlement Amount shall not be
28 increased in the Court requires a larger LWDA Payment.

1 **5.7. Individual Settlement Payments From the Net Settlement**

2 **Amount.** This Settlement shall be a non-reversionary Settlement. Each Class Member
3 who does not opt out of the Settlement shall be entitled to an Individual Settlement
4 Payment consisting of their share of the Net Settlement Amount, in accordance with the
5 formula set forth below.

6 **5.7.1 Individual Settlement Calculations and Payments.** Each
7 Class Member will be eligible to receive a portion of the Net Settlement Amount in
8 accordance with the following formula:

9 Each Class Member's potential share of the Net Settlement
10 Amount will be calculated by dividing the number of Weeks
11 Worked by the Class Member by all Weeks Worked during the
12 Class Period by all Class Members, multiplied by the Net
13 Settlement Amount [*i.e.*, (individual Weeks Worked ÷ total
Weeks Worked by Class Members) x Net Settlement Amount].

14 **5.7.2 Disputes Regarding Weeks Worked.** The Notice of Class
15 Action Settlement will list each Class Member's number of Weeks Worked, for purposes
16 of determining the Individual Settlement Payment. If a Class Member disputes the
17 number of Weeks Worked on the Notice of Class Action Settlement, the Class Member
18 must produce, by no later than fourteen (14) calendar days from the date the Notice of
19 Class Action Settlement is postmarked, evidence to the Settlement Administrator
20 showing that such information is inaccurate. All disputes will be decided within seven (7)
21 calendar days from the date the dispute is received by the Settlement Administrator. The
22 Settlement Administrator shall have the authority to determine the outcome of any
23 disputes, but may contact Defendant's Counsel to seek their input.

24 **5.8. Distribution of Individual Settlement Payments.** Each Class
25 Member's portion of the Net Settlement Amount shall be distributed as one check.

26 **5.8.1 Settlement Checks.** The settlement check shall be for the
27 amount of each Class Member's Individual Settlement Payment. The check will include
28 language indicating that endorsing and cashing the check will constitute a release of

claims under the California Labor Code, California Unfair Competition Law, and PAGA, for any and all claims asserted or that could have been asserted based on the facts alleged in the Action. The language to be included will be substantially similar to the following:

My signature or cashing of this check constitutes a full and complete release of Island Hospitality Management III, LLC, and all of their current or former subsidiary or affiliated entities, and their current or former officers, directors, and employees, for any and all claims asserted or that could have been asserted based on the facts alleged in the operative First Amended Complaint in the lawsuit entitled *Teresa Garcia v. Island Hospitality Management III, LLC*, pending in the United States District Court, Central District of California, Case No. 8:24-cv-00583-DOC-ADS including the claims brought under the California Labor Code, California Unfair Competition Law, or PAGA, arising during my employment at any time between September 6, 2019, through the date the Court enters a Preliminary Approval Order.

5.9. Timing of Individual Settlement Payments. The Settlement Administrator shall issue the distribution of the Individual Settlement Payments no later than thirty (30) calendar days after the funding of the Gross Settlement Amount.

5.10. Allocation of Individual Settlement Payments. Each Class Member's Individual Settlement Payment will be characterized as 80% Form 1099 income and 20% Form W-2 income, to reflect that 80% of the payment will account for penalties and interest, while 20% will account for unpaid wages. In accordance with applicable tax laws, required tax withholdings and payroll deductions will be taken from each Individual Settlement Payment for the portion allocated to Form W-2 income and remitted to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to Class Members for their respective Individual Settlement Payments. Class Members shall be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payments. In allocating the

1 Individual Settlement Payments, the Parties agree that, pursuant to applicable law, all
2 payments for wages shall be subject to payroll tax withholdings and a Form W-2, while
3 all payments for penalties shall not be subject to payroll tax withholdings and will be
4 recorded on a Form 1099.

5 **5.10.1 Allocation of Individual Settlement Payment Not Material.**

6 The Court's approval of the allocation of the Individual Settlement Payment for Form
7 1099 income and Form W-2 income is not a material term of the Settlement or this
8 Agreement. If the Court does not approve or approves a different allocation of the
9 Individual Settlement Payments, the other terms of the Settlement and this Agreement
10 shall apply. The Court's refusal to approve the allocation for the Individual Settlement
11 Payments requested by the Parties does not give the Parties any basis to abrogate the
12 Settlement or this Agreement.

13 **5.10.2 Undeliverable or Uncashed Checks.** Any settlement checks
14 distributing Individual Settlement Payments returned to the Settlement Administrator as
15 undeliverable shall be sent within 5 calendar days via First Class U.S. Mail to the
16 forwarding address affixed thereto. If no forwarding address is provided, the Settlement
17 Administrator shall attempt to determine the correct address using the National Change of
18 Address Database maintained by the United States Postal Service, and it shall then
19 perform a re-mailing within 5 calendar days. Uncashed settlement checks will not be re-
20 issued, except for good cause and as mutually agreed upon by the Parties in writing. The
21 amount of any Individual Settlement Payments that remain undeliverable or uncashed
22 180 calendar days after the postmarked date of the initial mailing of the Individual
23 Settlement Payments will be sent to the California State Controller's Office to be held as
24 "Unclaimed Property" in the name of the Class Member. The Settlement Administrator
25 shall notify Class Counsel and Defendant's Counsel of any undeliverable checks.

26 **5.11. Tax Payment Considerations.** Class Counsel, Defendant's Counsel,
27 Defendant, and the Settlement Administrator are not giving any tax advice in connection
28 with the Settlement or any payments to be made pursuant to this Agreement.

1 **5.12. No Tax Advice or Liability.** Each Class Member agrees to
2 indemnify, and to hold harmless, Defendant from any liability for taxes, fees, costs, or
3 assessments resulting from his or her failure to timely pay taxes, interest, fees, or
4 penalties owed.

5 **5.13. No Impact On Contributions To Employee Benefit Plans.** None of
6 the payments made pursuant to the Settlement and this Agreement shall be considered to
7 alter the terms or to grant any rights to additional payments under any employee benefit
8 plans. None of the payments made pursuant to the Settlement and this Agreement shall be
9 considered for purposes of determining eligibility for, vesting or participation in, or
10 contributions to any benefit plan, including, without limitation, all plans subject to the
11 Employee Retirement and Income Security Act of 1974 (“ERISA”). Any distribution of
12 payments to Plaintiff or Class Members shall not be considered as a payment of wages or
13 compensation under the terms of any applicable benefit plan and shall not affect
14 participation in, eligibility for, vesting in, the amount of any past or future contribution
15 to, or level of benefits under any applicable benefit plan.

16 Any amounts paid will not impact or modify any previously credited
17 hours of service or compensation taken into account under any bonus or incentive plan,
18 benefit plan sponsored or contributed to by Defendant or any jointly-trusted benefit
19 plan, or for purposes of calculating the regular rate of pay. For purposes of this
20 Agreement, “benefit plan” means each and every “employee benefit plan,” as defined in
21 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k) plan, bonus,
22 pension, stock option, stock purchase, stock appreciation, welfare, profit sharing,
23 retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred
24 compensation, or any other similar benefit plan, practice, program, or policy.

25 **6. RELEASES**

26 **6.1. Release by Class Members and Aggrieved Employees.** By
27 operation of the entry of the Final Approval Order and judgment and contingent upon full
28 funding of all sums owed under this Agreement, each Class Member, and each of their

1 respective executors, administrators, representatives, agents, heirs, successors, assigns,
2 trustees, spouses, or guardians, will release Defendant and each of the Released Parties of
3 and from any and all claims, rights, demands, charges, complaints, causes of action,
4 obligations, or liability of any and every kind between September 6, 2019 through the
5 date the Court enters a Preliminary Approval Order, for any and all claims that were
6 raised or could have been raised based on the factual allegations made in the operative
7 First Amended Complaint. This includes claims for (1) Failure to Pay All Wages
8 Including Minimum and Overtime Wages; (2) Failure to Provide Meal Periods; (3)
9 Failure to Provide Rest Periods; (4) Failure to Reimburse for Necessary Business
10 Expenditures; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Waiting
11 Time Penalties; (7) Violation of California's Quota Laws; (8) Unfair Business Practices;
12 and (9) Penalties Under Private Attorneys General Act, Labor Code § 2698 et seq. for
13 alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512,
14 558, 1174, 1194, 1197, 1198, 2802, the California Industrial Welfare Commission Wage
15 Order, and California Code of Regulations, Title 8, section 11010, subdivisions 7, 11, and
16 12; (10) claims arising out of alleged violations of the California Labor Code sections
17 200, 201, 202, 203, 204, 206, 216, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 227.3,
18 246, 351, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2100-
19 2112, 2698-2699.5, 2802, and California Industrial Welfare Commission Wage Order
20 No. 5-2001; (11) penalties of any nature; (12) interest; (13) attorneys' fees and costs; and
21 (14) any other claims arising out of or related to the First Amended Complaint filed in the
22 Action, as well as Plaintiff's June 26, 2023 LWDA letter, through the date the Court
23 enters a Preliminary Approval Order.

24 Class Members employed by Defendant from July 3, 2022 through the date
25 the Court enters a Preliminary Approval Order are "Aggrieved Employees" under PAGA
26 for purposes of this Settlement. Aggrieved Employees who exclude themselves from the
27 Class portion of this Settlement shall still receive an individual settlement payment under
28 PAGA, pursuant to Sections 4.2.2 and Section 5.6. All Aggrieved Employees, and each

1 of their respective executors, administrators, representatives, agents, heirs, successors,
2 assigns, trustees, spouses, or guardians, will release Defendant and each of the Released
3 Parties of and from any and all claims, rights, demands, charges, complaints, causes of
4 action, obligations, or liability of any and every kind between July 3, 2022 through the
5 date the Court enters a Preliminary Approval Order, for any and all PAGA claims that
6 were raised or could have been raised based on the factual allegations made in the
7 operative First Amended Complaint. The release contained herein is intended to be a
8 release of any and all claims to the fullest extent permissible by law.

9 **6.2. Additional Release by Class Representative.** In addition to the
10 above release applicable to the Class Members, the Class Representative also generally
11 releases any and all claims against Defendant and each of the Released Parties. This
12 general release includes any and all claims arising from the employment relationship with
13 Defendant or any Released Party, including, without limitation, claims for wrongful
14 termination, discrimination, harassment, or retaliation pursuant to Title VII of the Civil
15 Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and
16 Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or the California Labor Code. This
17 general release by the Class Representative also includes a waiver of California Civil
18 Code Section 1542. The Class Representative expressly waives all rights provided by
19 California Civil Code Section 1542, or other similar statutes, that the Class
20 Representative may have against Defendant and each of the Released Parties. California
21 Civil Code Section 1542 states:

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

27 **6.3. Class Representative Acknowledgements.** The Class
28 Representative acknowledges that she has read this Agreement in its entirety, including
the above language from the California Civil Code, and that she fully understands both

1 this Agreement and the California Civil Code section. By executing this Agreement, the
2 Class Representative expressly waives any benefits and rights granted pursuant to
3 California Civil Code Section 1542 or any statute, rule, or principle of common law or
4 equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part,
5 to California Civil Code Section 1542. The Class Representative acknowledges and
6 agrees that this knowing and voluntary waiver is an essential and material term of this
7 Agreement, and the Agreement would not have been entered into without such a waiver.

8 **6.4. Injunction from Pursuing Released Claims.** As part of the
9 preliminary approval of the Settlement, Class Members shall be enjoined from filing,
10 initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in
11 any court, or with the DLSE, or with the California Labor and Workforce Development
12 Agency (“LWDA”), or the United States Department of Labor (“DOL”), or with any
13 other entity regarding the Released Claims.

14 This Settlement is conditioned upon the release by the Settlement
15 Class as described herein, and upon covenants by the Settlement Class that they will not
16 participate in any actions, lawsuits, proceedings, complaints, or charges brought
17 individually by the DLSE, LWDA, DOL, or by any other agency, persons, or entity in
18 any court or before any administrative body related to the Released Claims, nor will the
19 Settlement Class contest or interfere with efforts by Defendant to oppose any attempt to
20 bring such released claims against Defendant.

21 **6.5. Acknowledgement of Binding Terms of the Settlement, Despite**
22 **Other Potential Claims.** Class Counsel, the Class Representative, and the Settlement
23 Class acknowledge that they may hereafter discover facts or law different from, or in
24 addition to, the facts or law they know or believe to exist with respect to the Released
25 Claims. The Settlement Class nonetheless agrees that this Agreement and the Released
26 Claims contained in it shall be and remain effective in all respects notwithstanding such
27 different or additional facts or law regarding such Released Claims. These releases do not
28 include any claims that cannot be waived as a matter of law, but the Settlement Class

1 agrees that they will not accept any monetary recovery or benefit from any proceedings
2 relating to any such claims.

3 **6.6. No Admission of Liability.** By entering into this Agreement,
4 Defendant in no way admits any violation of law or any liability whatsoever to Class
5 Members, individually or collectively, and expressly denies all such liability. Neither this
6 Agreement, nor any other Settlement documents, shall be offered in any case or
7 proceeding as evidence of any admission by Defendant of any liability on any claim for
8 damages, penalties, restitution, or any other relief. Likewise, by entering into this
9 Agreement, Defendant in no way admits to the suitability of this case for class action,
10 collective action, or representative action litigation, other than for purposes of Settlement.
11 Rather, Defendant enters into this Agreement to avoid further protracted litigation and to
12 resolve and to settle all disputes with the Settlement Class.

13 The Parties understand and agree that this Agreement and all exhibits
14 thereto are settlement documents and shall be inadmissible for any purpose in any
15 proceeding, except an action or proceeding to approve, interpret, or enforce the terms of
16 this Agreement. The Parties agree that, to the extent permitted by law, this Agreement
17 may be pleaded as a full and complete defense to, and may be used as the basis for an
18 injunction against any action, suit, or other proceeding that may be instituted, prosecuted,
19 or attempted in breach of this Agreement.

20 **7. SETTLEMENT APPROVAL PROCEDURE**

21 **7.1. Preliminary Approval.** The Parties shall submit to the Court a Joint
22 Motion for Preliminary Approval of class action settlement by May 24, 2024. This
23 motion shall seek an order to preliminarily approve the proposed Settlement according to
24 the terms in this Agreement and provide for the Notice of Class Action Settlement and
25 the Request for Exclusion, to be sent to Class Members as specified in this Agreement.
26 This motion shall include the bases for the Gross Settlement Amount and why the amount
27 is reasonable in light of the facts and controlling authorities pertaining to the claims
28 alleged in the First Amended Complaint. The motion shall also be accompanied by

1 signed declarations by Class Counsel, discussing the risks of continued litigation and the
2 decision that the best interests of Plaintiff and the Class Members are served by the terms
3 of this Agreement.

4 **7.2. Effect of Failure to Obtain Preliminary Approval.** If this
5 Settlement or Agreement or a substantially similar settlement mutually agreed to by the
6 Parties is not preliminarily approved, the Action shall proceed as if no settlement had
7 been attempted and revert back to its prior procedural posture, *i.e.*, the Original
8 Complaint shall be the operative Complaint. The Parties may, however, jointly agree to
9 seek reconsideration of the ruling on the Settlement or Court approval of a renegotiated
10 settlement. Defendant retains the right to contest whether any aspect of the Action should
11 be maintained as a class action or representative action, or to contest the merits of the
12 claims being asserted by the Class Representative or Class Members in the Action.

13 **7.3. Final Approval.** The Parties shall submit to the Court a Joint Motion
14 for Final Approval Order. The motion shall request the entry of a Final Approval Order,
15 which shall include findings and orders: (a) approving the Settlement and the Agreement;
16 (b) adjudging the terms to be fair, reasonable, and adequate; (c) reciting the release terms
17 in full; (d) directing that the Settlement terms and provisions be carried out; and (e)
18 retaining jurisdiction to oversee administration and enforcement of the terms of this
19 Agreement and the Court's orders.

20 **7.4. Motion for Attorneys' Fees and Costs Award.** Class Counsel shall
21 file a motion for Court approval of an attorneys' fees and costs award in the amount of
22 (a) up to 25% of the Gross Settlement Amount (or \$35,000) and (b) verified costs in the
23 amount of up to \$3,000. Defendant will not oppose the motion provided it is consistent
24 with this paragraph. Defendant will not be required to support such a motion.

25 **7.5. Entry of Judgment.** At the final approval hearing, the Parties shall
26 request that the Court, among other things: (a) enter final judgment in accordance with
27 this Agreement and without further fees or costs to any party except as expressly set forth
28 in this Agreement; (b) approve this Agreement as fair, reasonable, adequate, and binding

1 on all members of the Settlement Class; (c) enter an order as to Class Counsel's request
2 for an attorneys' fees and costs award; (d) enter an order as to the request for the Class
3 Representative Incentive Payment; and, (e) enter an order permanently enjoining all
4 members of the Settlement Class from pursuing or seeking to reopen claims that have
5 been released by this Agreement.

6 **7.6. Effect of Failure to Obtain Final Judgment.** In the event the Court
7 fails to enter final judgment in accordance with this Agreement, or such final judgment is
8 vacated or reversed, the Action shall proceed as if no settlement had been attempted and
9 revert back to its prior procedural posture, *i.e.*, the Original Complaint shall be the
10 operative Complaint. The Parties may, however, jointly agree to seek reconsideration or
11 appellate review of the ruling or Court approval of a renegotiated settlement. Defendant
12 retains the right to contest whether any aspect of the Action should be maintained as a
13 class action or representative action, or to contest the merits of the claims being asserted
14 by the Class Representative or Class Members in the Action.

15 **7.7. Waiver of Appeal Rights.** By accepting this Settlement, authorizing
16 the dismissal of the Action with prejudice, and upon final approval of the settlement
17 being granted, the Class Representative and Class Counsel hereby waive any and all
18 rights they may have to appeal any judgment, ruling, or order made by the Court in this
19 Action, including, without limitation, any order granting final approval of this Settlement
20 or dismissing the Action with prejudice. This includes all rights to any post-judgment
21 proceeding and appellate proceeding, such as, but not limited to, a motion to vacate
22 judgment, a motion for new trial, a motion for relief under Fed. R. Civ. P. 60, and any
23 extraordinary writ, and the Judgment therefore will become nonappealable at the time it
24 is entered. The waiver of appeal does not include any waiver of the right to oppose any
25 appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from
26 the Judgment, the time for consummation of the Settlement (including making payments
27 under the Settlement) will be suspended until such time as their appeal is finally resolved
28 and the Judgment becomes final.

1 **8. MISCELLANEOUS**

2 **8.1. Interim Stay of Proceedings.** The Parties agree to refrain from
3 further litigation, except such proceedings necessary to implement and to obtain a
4 Preliminary Approval Order and Final Approval Order of the terms of the Agreement. If
5 the Settlement is not finally approved, the Parties agree that they will revert to their
6 positions in the lawsuit prior to the time the Settlement was reached, and no agreements
7 set forth in this Agreement or any documents generated or orders issued related to the
8 Settlement will be admissible in any future proceeding in this or any other action.

9 **8.2. Parties' Authority.** The signatories hereto represent that they are
10 fully authorized to enter into this Agreement and are fully authorized to bind the Parties
11 to all terms stated herein. It is agreed that Class Members are so numerous that it is
12 impossible or impractical to have each Class Member execute this Agreement. It is
13 agreed that this Agreement may be executed on behalf of Class Members by the Class
14 Representative and Class Counsel.

15 **8.3. Entire Agreement.** This Agreement, which includes the Definitions,
16 Recitals, and all Exhibits attached hereto, constitutes the entire agreement between the
17 Parties with regard to the subject matter contained herein, and all prior and
18 contemporaneous negotiations and understandings between the Parties shall be deemed
19 merged into this Agreement.

20 **8.4. Materiality of Terms.** The Parties have arrived at this Agreement as
21 a result of arm's-length negotiations. Where stated in this Agreement, certain terms are
22 material and revision of these material terms will allow Defendant the option to void this
23 Agreement.

24 **8.5. Counterparts.** This Agreement may be executed in counterparts, and
25 when each party has signed and delivered at least one such counterpart, each counterpart
26 shall be deemed an original, and when taken together with other signed counterparts,
27 shall constitute one signed Agreement, which shall be binding upon and effective as to all
28 Parties.

1 **8.6. Facsimile or Scanned Signatures For This Agreement.** Any party
2 may sign and deliver this Agreement by signing on the designated signature block and
3 transmitting that signature page via facsimile or as an attachment to an e-mail to counsel
4 for the other party. Any signature made and transmitted by facsimile or as an attachment
5 to an e-mail for the purpose of executing this Agreement shall be deemed an original
6 signature for purposes of this Agreement and shall be binding upon the party who
7 transmits the signature page.

8 **8.7. Binding Effect.** This Agreement shall be binding upon the Parties
9 and, with respect to the Class Representative, Class Members, their spouses, children,
10 representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys,
11 and assigns.

12 **8.8. Waivers and Modifications to Be in Writing.** No waiver,
13 modification, or amendment of the terms of this Agreement, whether purportedly made
14 before or after the Court's approval of this Agreement, shall be valid or binding, unless in
15 writing, signed by or on behalf of all Parties and then only to the extent set forth in such
16 written waiver, modification, or amendment, subject to any required Court approval. Any
17 failure by any Party to insist upon the strict performance by the other Party of any of the
18 provisions of this Agreement shall not be deemed a waiver of future performance of the
19 same provisions or of any of the other provisions of this Agreement, and such Party,
20 notwithstanding such failure, shall have the right thereafter to insist upon the specific
21 performance of any and all of the provisions of this Agreement. The time periods and
22 dates provided in this Agreement with respect to giving of notices and hearings are
23 subject to Court approval and modification by the Court or by written stipulation of Class
24 Counsel and Defendant's Counsel.

25 Any notice to be given pursuant to this Agreement shall be made by
26 email and overnight delivery to Class Counsel or Defendant's Counsel. If Class Members
27 have questions about this Agreement or their Individual Settlement Payments, they must
28 contact Class Counsel, rather than Defendant. Defendant shall have no obligation to

1 respond to communications by Class Members.

2 **8.9. Construction.** The determination of the terms and conditions of this
3 Agreement has been by mutual agreement of the Parties. Each party participated jointly
4 in the drafting of this Agreement, and the terms and conditions of this Agreement are not
5 intended to be, and shall not be, construed against any party by virtue of draftsmanship.

6 **8.9.1 Exhibits Incorporated by Reference.** The terms of this
7 Agreement include the terms set forth in any attached exhibit, which are incorporated by
8 this reference as though fully set forth herein. Any exhibit to this Agreement is an
9 integral part of the Settlement.

10 **8.9.2 Captions.** The captions or headings of the sections and
11 paragraphs of this Agreement have been inserted for convenience of reference only and
12 shall have no effect upon the construction or interpretation of any part of this Agreement.

13 **8.9.3 Invalidity of Any Provision.** Before declaring any
14 provision of this Agreement invalid, the Court shall first attempt to construe the
15 provisions valid to the fullest extent possible consistent with applicable precedents so as
16 to render all provisions of this Agreement valid and enforceable.

17 **8.10. Further Acts and Cooperation Between the Parties.** The Parties
18 shall cooperate fully with each other and shall use their best efforts to obtain the Court's
19 approval of this Agreement and all of its terms. Each of the Parties, upon the request of
20 another, agrees to perform such further acts and to execute and to deliver such other
21 documents as are reasonably necessary to carry out the provisions of this Agreement.

22 **8.11. No Prior Assignments or Undisclosed Liens.** The Class
23 Representative and Class Counsel represent and warrant that they have not assigned,
24 transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey,
25 or otherwise dispose of, any Released Claims or the attorneys' fees and costs award to be
26 paid pursuant to this Agreement. The Class Representative and Class Counsel further
27 represent and warrant that there are not any liens or claims against any of the amounts to
28 be paid by Defendant pursuant to this Agreement. The Class Representative and Class

1 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any
2 liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees,
3 resulting from a breach of these representations or from any lien or assignment.

4 **8.12. Waiver of Right to Object by the Class Representative.** The Class
5 Representative agrees to sign this Agreement, and by signing this Agreement, the Class
6 Representative is thereby bound by the terms of this Agreement. The Class
7 Representative further agrees that she shall not object to any of the terms of this
8 Agreement.

9 **8.13. No Solicitation of Objections.** The Parties further represent and
10 warrant that they have not and will not solicit, encourage, or assist in any fashion any
11 effort by any entity or person to object to or to seek exclusion from the Settlement set
12 forth in this Agreement.

13 **8.14. Discovery of Confidential Documents and Information.** Class
14 Counsel agree that they will destroy all confidential documents and information provided
15 to them by Defendant within 60 calendar days after the completion of the administration
16 of the Settlement. Class Counsel further agrees that none of the documents and
17 information provided to them by Defendant shall be used for any purpose other than
18 prosecution of this Action or the defense or prosecution of a malpractice action.

19 **8.15. No Tax Advice.** Neither Class Counsel, Defendant's Counsel, or
20 Defendant intend anything contained in this Settlement or Agreement to constitute advice
21 regarding taxes or taxability, nor shall anything in this Settlement or Agreement be relied
22 upon as such within the meaning of United States Treasury Department Circular 230 (31
23 C.F.R. Part 10, as amended) or otherwise.

24 **8.16. No Media Announcements.** Neither side shall make any public
25 statements to the news, print, electronic, or Internet media concerning the Settlement, and
26 both sides shall decline to respond to media inquiries concerning the Settlement. Class
27 Counsel shall not publicize the settlement in their marketing materials, website, or other
28 advertising media.

1 **8.17. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
2 implementation of this Agreement as well as any and all matters arising out of, or related
3 to, the implementation of this Agreement and Settlement. The Court shall not have
4 jurisdiction to modify the terms of the Agreement without the consent of all of the
5 Parties.

6 **8.18. Disputes.** If the Parties have a dispute with regard to the language of
7 this Agreement, they agree to resolve the dispute informally through good-faith
8 negotiations with a mutually-agreed upon mediator. The Parties will split the costs of the
9 mediator, and the Parties will bear their own fees and costs.

10 **8.19. Governing Law.** This Settlement and Agreement was made and
11 entered into in the State of California. All terms of this Agreement shall be governed by
12 and interpreted according to the substantive laws of the State of California and the
13 procedural laws of the United States of America.

14 **SO AGREED AND STIPULATED:**

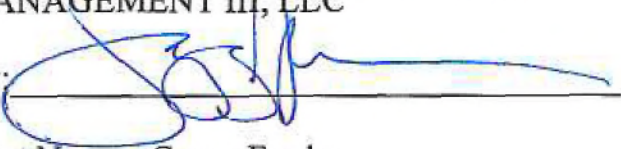
15 DATED: May __, 2024

PLAINTIFF TERESA GARCIA

16 By: _____
17 TERESA GARCIA

18
19 DATED: May 30, 2024

DEFENDANT ISLAND HOSPITALITY
MANAGEMENT III, LLC

20 By:  _____
21
22 Print Name: Gregg Forde

23 Title: President & Chief Operating Officer
24
25
26
27
28

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2 implementation of this Agreement as well as any and all matters arising out of, or related
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4 jurisdiction to modify the terms of the Agreement without the consent of all of the
5 Parties.

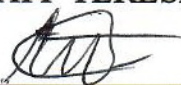
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9 mediator, and the Parties will bear their own fees and costs.

10 **8.19. Governing Law.** This Settlement and Agreement was made and
11 entered into in the State of California. All terms of this Agreement shall be governed by
12 and interpreted according to the substantive laws of the State of California and the
13 procedural laws of the United States of America.

14 **SO AGREED AND STIPULATED:**

15 DATED: May 24, 2024

PLAINTIFF TERESA GARCIA

16 By: 
17 _____

TERESA GARCIA

18
19 DATED: May __, 2024

DEFENDANT ISLAND HOSPITALITY
MANAGEMENT III, LLC

20 By: _____
21 _____

22 Print Name: Gregg Forde

23 Title: President & Chief Operating Officer
24 _____
25 _____
26 _____
27 _____
28 _____

1 DATED: May 29, 2024

GARAY LAW, APLC

2 By: JOSE GARAY
3 JOSE GARAY

4 Attorneys for Plaintiff, the Class
5 Representative, and Settlement Class

6 DATED: May 31, 2024

SEYFARTH SHAW LLP

7 By: Miguel Ramirez
8 BRIAN T. ASHE
9 MICHAEL AFAR
10 BAILEY K. BIFOSS
11 MIGUEL A. RAMIREZ

12 Attorneys for Defendant
13 ISLAND HOSPITALITY MANAGEMENT
14 III, LLC
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Ex. A to Joint Stipulation of Settlement – Class Notice

NOTICE OF SETTLEMENT OF CLASS ACTION

Teresa Garcia v. Island Hospitality Management III, LLC.
United States District Court, Central District of California
Case No. 8:24-cv-00583-DOC-ADS

To: All current and former non-exempt, hourly employees working for Defendant Island Hospitality Management III, LLC in California at any time between September 6, 2019 to [TBD] (the “Class”):

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on December 9, 2024 to address whether the proposed settlement should be approved (“Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$[INSERT AMOUNT] as your share of the Net Settlement Amount should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the Net Settlement Amount may be more or less than this estimate. Your estimate is based on the number of weeks you worked with Island Hospitality Management III, LLC in California between September 6, 2019 to [TBD] (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (SEE SECTION VII FOR MORE DETAILS)	
DO NOTHING	Receive a settlement payment and give up your right to sue on the Released Claims described in Section IV. This settlement does <u>not</u> require a claims process to receive a payment. Therefore, there is <u>no</u> claim form for you to complete should you wish to receive payment. You are automatically included and eligible to receive a payment once the Court approves the settlement.
EXCLUDE YOURSELF	You may “opt-out” of any connection with this case including any right to a settlement payment. If you choose to opt-out, you must submit a Request for Exclusion by [INSERT DATE] (see Section VI). All persons who validly and timely opt-out of the Settlement will <u>not</u> receive any settlement payment and will preserve Released Claims described in Section IV subject to applicable statutes of limitations, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.
OBJECT	Write to the Court and Settlement Administrator about why you do not like the Settlement by completing and submitting an Objection by [INSERT DATE] (see Section VI).
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Teresa Garcia v. Island Hospitality Management III, LLC*, United States District Court, Central District of California, Case No. 8:24-cv-00583-DOC-ADS (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Island Hospitality Management III, LLC’s records show that you were employed by it in California as a non-exempt, hourly employee at some point between September 6, 2019 to [TBD]. The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Island Hospitality Management III, LLC as a non-exempt, hourly employee in California during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On September 6, 2023, Plaintiff Teresa Garcia filed a class action complaint against Island Hospitality Management III, LLC on behalf of the Class in Orange County Superior Court, Case No. 30-2023-01347951-CU-OE-CXC. The proceeding was removed to the United States District Court for the Central District of California as Case No. 8:24-cv-00583-DOC-ADS. On [REDACTED], 2024, Plaintiff filed the operative First Amended Complaint against Island Hospitality Management III, LLC on behalf of the Class.

The class and representative action on behalf of herself and other similarly situated and “aggrieved” employees, assert claims against Island Hospitality Management III, LLC for: (1) Failure to Pay All Wages Including Minimum and Overtime Wages; (2) Failure to Provide Meal Periods in Violation of Labor Code; (3) Failure to Provide Rest Periods; (4) Failure to Reimburse for Necessary Business Expenditures; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Waiting Time Penalties; (7) Violation of California’s Quota Laws; (8) Unfair Business Practices; and (9) Penalties Under Private Attorneys General Act, Labor Code § 2698 *et seq.* Island Hospitality Management III, LLC denies these allegations and contends that it has done nothing wrong. It denies that it owes any wages, expenses, restitution, penalties, or other damages. Accordingly, this class Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Island Hospitality Management III, LLC, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Island Hospitality Management III, LLC and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After an extensive exchange of information to Class Counsel by Island Hospitality Management III, LLC, the Settlement was reached following arm’s-length negotiations. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Island Hospitality Management III, LLC, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Island Hospitality Management III, LLC, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Island Hospitality Management III, LLC will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate, their share will be paid to those who do participate.

III. Who are the attorneys?

Attorneys for the Class Members:

JOSE GARAY, APLC
Jose R. Garay (SBN 200494)
249 E. Ocean Blvd., #814
Long Beach, California 90802
Telephone: (949) 208-3400
Facsimile: (949) 590-8400
Jose@Garaylaw.com

IV. What are the terms of the Settlement?

On [TBD], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by Island Hospitality Management III, LLC who worked in California between September 6, 2019 to [TBD] (the “Settlement Class”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against Island Hospitality Management III, LLC.

Without admitting any wrongdoing, the Company has agreed to pay One Hundred and Forty Thousand Dollars (\$140,000) (the “Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments for Individual Settlement Payments to eligible Class Members, the California Labor & Workforce Development Agency (“LWDA”), attorneys’ fees and costs, Settlement Administration Costs, and a Class Representative Service Payment.

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved [NAME], to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of [AMOUNT] Dollars (\$XXX) will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Penalties to the LWDA. Four Thousand Dollars (\$4,000) of the Settlement Amount will be allocated to Plaintiff’s claim under PAGA. Of this amount, Three Thousand (\$3,000) will be paid to the LWDA in satisfaction of the claims for penalties under PAGA, and the remaining One Thousand Dollars (\$1,000) will be included in the Net Settlement Amount to be divided between all Class Members.

Class Members employed by Defendant from July 3, 2022 through [TBD] are “Aggrieved Employees” under PAGA for purposes of this Settlement. The LWDA Payment portion of the Gross Settlement Amount shall be distributed to Aggrieved Employees based on number of workweeks worked during the PAGA period, defined as July 3, 2022 through [TBD]. Class Members who opt out of the class portion of the Settlement and worked during the PAGA period will receive their respective share of the LWDA Payment, even if they opt out of the class portion, because there are no opt-out rights under PAGA.

Class Representative Incentive Payment. Class Counsel will ask the Court to award Plaintiff a Class Representative Incentive Payment in the amount of Five Thousand Dollars (\$5,000) to compensate her for service and extra work provided on behalf of the Class Members. The Plaintiff also may receive a share of the Settlement as a Class Member.

Attorneys’ Fees and Expenses. Class Counsel (JOSE GARAY, APLC) have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of 25% of the common fund Settlement Amount (\$35,000) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to Three Thousand Dollars (\$3,000) for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above, the balance will form the Net Settlement Amount for distribution to the participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately [AMOUNT] (\$XXX). Compensable work weeks will be all Workweeks Worked by the Settlement Class Members during the Class Period. The dollars per compensable Workweek will be calculated by dividing the total Workweeks Worked (excluding any excluded workweeks) by all Settlement Class Members into the Net Settlement Amount to determine a per work week value (“Workweek Value”). The Workweek Value will be multiplied by the number of Workweeks Worked by each Settlement Class Member during the Class Period to determine the distribution, prior to legal deductions, for each Settlement Class Member. If any individual in the Settlement Class opts-out of the Settlement, their Individual Settlement Amount will be distributed to all Participating Class Members (i.e., those who do not opt-out).

For each Settlement Class Member, the Weeks Worked for Island Hospitality Management III, LLC during the Class Period will be calculated from Island Hospitality Management III, LLC’s records. Island Hospitality Management III, LLC’s records

indicate that you worked for **[TOTAL WORKWEEKS]** Workweeks in California during the Class Period of September 6, 2019, to **[TBD]**. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before **[INSERT DATE]**, with documentation to establish the number of weeks you claim to have actually worked for Island Hospitality Management III, LLC in California between September 6, 2019 to **[TBD]** (excluding any excluded workweeks). **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class Member and discuss in good faith how many Workweeks should be credited to each Settlement Class Member. If the Parties are unable to agree, the Settlement Administrator will render a final decision.

Payments to Participating Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all participating Class Members who did not timely request to be excluded. Participating Class Members will have 180 days from the issuance of the last check to cash their checks. In the event that any Class Member fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be sent to the California Unclaimed Property Fund in the name of the Class Member, so that the Class Member can attempt to collect the funds at a later date.

Allocation and Taxes. Twenty percent (20%) of the Settlement Amount distributed to each participating Class Member will be considered and reported as “wages” (W-2 reporting). The remaining eighty percent (80%) of the Settlement Amount distributed to each participating Class Member will be distributed to each participating Class Member as “interest” and non-wage “penalties” (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or non-wage penalty distribution; however, it will be reported on IRS Form 1099 as income. Class Members are responsible for the proper income tax treatment of the Settlement Amounts. The Settlement Administrator, Island Hospitality Management III, LLC and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments. Participating Class Members will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. Once the Court approves the proposed Settlement, enters Judgment, and Island Hospitality Management III, LLC funds the Settlement Amount, then the Settlement Agreement will bind all Participating Class Members who have not opted out of the Settlement, and will bar them from bringing certain claims against Island Hospitality Management III, LLC as described below. Specifically, after Final Approval by the Court, the Participating Class Members and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Island Hospitality Management III, LLC and each of the Released Parties of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind between September 6, 2019, to **[TBD]**, for any and all claims that were raised or could have been raised based on the factual allegations made in the operative First Amended Complaint. This includes claims for (1) Failure to Pay All Wages Including Minimum and Overtime Wages; (2) Failure to Provide Meal Periods in Violation of Labor Code; (3) Failure to Provide Rest Periods; (4) Failure to Reimburse for Necessary Business Expenditures; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Waiting Time Penalties; (7) Violation of California’s Quota Laws; (8) Unfair Business Practices; and (9) Penalties Under Private Attorneys General Act, Labor Code § 2698 et seq for alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, 2802, the California Industrial Welfare Commission Wage Order, and California Code of Regulations, Title 8, section 11010, subdivisions 7, 11, and 12; (10) claims arising out of alleged violations of the California Labor Code sections 200, 201, 202, 203, 204, 206, 216, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 246, 351, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2100-2112, 2698-2699.5, 2802, and California Industrial Welfare Commission Wage Order No. 5-2001; (11) penalties of any nature; (12) interest; (13) attorneys’ fees and costs; and (14) any other claims arising out of or related to the First Amended Complaint filed in the Action, as well as Plaintiff’s June 26, 2023 LWDA letter, through **[TBD]**. These released claims and damages are hereinafter referred to as “Released Claims.” The time period governing these Released Claims shall be at any time from September 6, 2019 through **[TBD]** (“Release Period”). Any Settlement Class Member who timely requests exclusion in compliance with these requirements will not be bound by this Release, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

All Aggrieved Employees, as defined above, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Defendant and each of the Released Parties of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind between July 3, 2022 through **[TBD]**, for any and all PAGA claims that were raised or could have been raised based on the

factual allegations made in the operative First Amended Complaint, as well as Plaintiff's June 26, 2023 LWDA letter. The release contained herein is intended to be a release of any and all claims to the fullest extent permissible by law.

Waiver of Labor Code Section 206.5(e). Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. How can I claim money from the settlement?

You are automatically included as a Settlement Class Member to receive an Individual Settlement Payment, provided that you do not exercise your right to opt-out as explained below, and do not have to take any further action. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Amount.

VI. What other options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by Island Hospitality Management III, LLC, and Island Hospitality Management III, LLC will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** You may submit a Request for Exclusion to "opt out" of this Settlement. If you do not want to remain a Class Member, you must submit the enclosed Request for Exclusion to "opt out" of the Settlement. If you submit a timely and valid Request for Exclusion, you will not receive any Individual Settlement Payment. If you opt out, you may not object to the Settlement and will not be bound by the release provisions in the Settlement Agreement. You will be free to pursue any claims you may have against Island Hospitality Management III, LLC on your own behalf, but Class Counsel will not represent you.

In order to exclude yourself from the Class, you must submit the completed Request for Exclusion to the Settlement Administrator, [ADDRESS], so that it is postmarked no later than [INSERT DATE]. If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Settlement, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court and you may not recover under any other individual settlement agreement with respect to the Release of Claims, including California Labor Code, California Industrial Welfare Commission Wage Orders, California Private Attorneys General Act of 2004 under California Labor Code §§ 2968, *et seq.*, and California Unfair Competition Law under California Business and Professions Code §§ 17200 *et seq.*

Class Members who opt out of the class portion of the Settlement and worked during the PAGA period will receive their respective share of the LWDA Payment, even if they opt out of the class portion, because there are no opt-out rights under PAGA.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must submit a written objection stating your full name, address, telephone number, dates of employment at Company, the case name and number, the name and address of your attorney(s) if you are represented,

each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and must be mailed to the Settlement Administrator, [ADDRESS], by no later than [INSERT DATE] for your objection to be considered. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

VII. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Island Hospitality Management III, LLC in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VIII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Payment to the Class Representative on December 9, 2024 at 8:30 a.m. in Courtroom 10A of the United States District Court Central District of California Courthouse, located at 411 West Fourth Street, Santa Ana, California 92701. You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

IX. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Stipulation for Class Action Settlement and Release of Claims (the Settlement Agreement) at Office of the Clerk, United States District Court Central District of California Courthouse, located at 411 West Fourth Street, Santa Ana, California 92701, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

Ex. B to Joint Stipulation – Request for Exclusion

**REQUEST FOR EXCLUSION FROM SETTLEMENT
AND EXCLUSION FROM INDIVIDUAL SETTLEMENT PAYMENT**

Teresa Garcia v. Island Hospitality Management III, LLC
United States District Court, Central District of California
Case No. 8:24-cv-00583-DOC-ADS

**YOU MAY TIMELY SUBMIT THIS REQUEST FOR EXCLUSION ONLY IF YOU
DO NOT WISH TO BE INCLUDED IN THE SETTLEMENT AND IF YOU DO NOT
WISH TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT.**

INSTRUCTIONS:

You must timely complete, sign, and mail this Request for Exclusion if you want to “opt out” of the Settlement and do not want to receive an Individual Settlement Payment. If you choose to continue to pursue the lawsuit, you will have to find new counsel at your own expense.

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

NAME AND FORMER NAMES (IF ANY): _____
ADDRESS LINE 1 _____
ADDRESS LINE 2 _____
LAST FOUR DIGITS OF _____
SOCIAL SECURITY NUMBER _____
TELEPHONE NUMBER _____

If you want to be excluded from the Settlement and not receive an Individual Settlement Payment, you must timely file this Request for Exclusion with [INSERT SETTLEMENT ADMINISTRATOR INFORMATION] no later than [INSERT DATE].

I declare the foregoing to be true and correct under penalty of perjury under the laws of the United States and the State of California.

Date: _____, 2024

Signed: _____

**Ex. C to Joint Stipulation –
First Amended Complaint**

1 Jose R. Garay (SBN: 200494)
jose@garaylaw.com
2 **JOSE GARAY, APLC**
249 E. Ocean Blvd. #814
3 Long Beach, CA 90802
Telephone: (949) 208-3400
4 Facsimile: (562) 590-8400

5 Attorneys for Plaintiff, Teresa Garcia
an individual, on behalf of herself and others similarly
6 situated,

7 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

8
9 TERESA GARCIA, an individual, on
behalf of herself and others similarly
10 situated,

11 Plaintiff,

12 vs.

13 ISLAND HOSPITALITY
14 MANAGEMENT III, LLC, a Delaware
15 corporation; and, DOES 1 through 50,
16 inclusive,

17 Defendants.

Case No. 8:24-cv-00583-DOC-ADS

**FIRST AMENDED CLASS
ACTION COMPLAINT**

1. Failure to Pay All Wages Including Minimum and Overtime Wages §§ 204, 206, 226.2, 226.8, 227.3, 510, 1182.12, 1194, 1194.2, 1197;
2. Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and Wage Order 5-2001, § 11;
3. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and Wage Order 5-2001, § 12;
4. Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code §§ 226, 226.3, and 1174;
5. Failure to Pay Earned Wages in Violation of Labor Code §§ 204, 206, 216, 218.5, 218.6;
6. Failure to Reimburse for Necessary Business Expenditures; Labor Code § 2802; and
7. Violation of California's Quota Laws, Labor Code §§ 2100, *et seq.*
8. Unfair Business Practices in Violation of Cal. Bus. & Prof Code §§ 17200, *et seq.*
9. Enforcement of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

1 Plaintiff Teresa Garcia (“Plaintiff”), individually, and on behalf of all others
2 similarly situated, brings this class action complaint (“Complaint”) against
3 Defendants Island Hospitality Management III, LLC, a Delaware corporation, and
4 DOES 1 through 50, inclusive (collectively, “Defendants” or “IHM3”), and alleges
5 as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class she
8 seeks to represent (“Class” or “Class Members”). The Class consists of all current
9 and former non-exempt employees employed by Defendants in the State of
10 California during the Class Period. The term “Class Period” is defined as four (4)
11 years prior to the filing of this class action until class certification. Plaintiff reserves
12 the right to amend this complaint to reflect a different “Class Period” as further
13 discovery is conducted.

14 2. Plaintiff, individually, and on behalf of Class, seeks relief against
15 Defendants, for their practices of violating the applicable Industrial Welfare
16 Commission (“IWC”) Wage Orders, Code of Regulations, and California Labor
17 Code, including: (1) failure to pay all wages (including minimum, regular, overtime,
18 and double time compensation); (2) failure to provide meal periods or compensation
19 in lieu thereof; (3) failure to authorize or permit rest breaks or provide compensation
20 in lieu thereof; (4) failure to reimburse business expenses; (5) failure to provide
21 accurate itemized wage statements; (6) failure to pay all wages due upon separation
22 of employment; and (7) violations of California’s quota laws. These violations
23 concern current and past non-exempt employees of Defendants.

24 3. At all relevant times herein, Defendants have consistently maintained
25 and enforced against Plaintiff and Class the unlawful practices and policies set forth
26 herein.

27 4. Plaintiff seeks monetary relief against Defendants on behalf of herself
28 and the putative class to recover, among other things, unpaid wages, liquidated

1 damages, restitution, interest, attorneys' fees, costs, and penalties pursuant to Labor
2 Code sections 201-204, 206, 208, 226, 226.7, 227.3, 351, 510, 512, 1182.12, 1194,
3 1194.2, 1197, 1198, 2100-2112, 2698 et seq., 2802, and California Code of Civil
4 Procedure section 1021.5.

5 **JURISDICTION AND VENUE**

6 5. This is a class action pursuant to Federal Rules of Civil Procedure 23.
7 The monetary damages, restitution, penalties, and other amounts sought by Plaintiff
8 exceeds the minimal jurisdictional limits of the Superior Court and will be
9 established according to proof at trial.

10 6. This Court has jurisdiction over this action pursuant to the Class Action
11 Fairness Act 2005, 28 U.S.C. § 1332(d) ("CAFA").

12 7. This Court has jurisdiction over all Defendants because the number of
13 class members exceeds 100 and the amount in controversy exceed \$5 million, as
14 established in Defendant's notice of removal (Dkt. No. 1), and thus CAFA
15 jurisdictional minimums are met here.

16 8. Venue is proper in this Court under 28 USC 84(c)(3).

17 **PARTIES**

18 9. Plaintiff is a California citizen and resides in Orange County,
19 California. Defendants employed Plaintiff as a non-exempt hourly employee during
20 the Class Period. Plaintiff's job duties, at IHM3 including a sundry of warehouse
21 duties based on production and quotas in which Plaintiff and putative class members
22 are assigned or required to perform at a specified productivity speed, or perform a
23 quantified number of tasks, or to handle or produce a quantified amount of material,
24 within a defined time period and under which employees suffer adverse employment
25 actions if they fail to complete the performance standard" for IHM3.

26 10. Defendant IHM3 was and is a California corporation doing business in
27 Orange County and elsewhere in California. IHM3's principal place of business is
28 located at 222 Lakeview Ave, Ste. 200 West Palm Beach, FL 33401, which is within

1 Orange County, California. Employer owns and operates hotels throughout
2 California. IHM3 is a joint employer in conjunction with Doe entities and/or
3 individual owners, managing agents, and managers and employed Plaintiff as a non-
4 exempt hourly employee in California during the liability period.

5 11. Plaintiff is informed and believes, and thereon alleges that at all times
6 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC
7 Wage Orders as employers, whose employees were and are engaged throughout this
8 county and the State of California.

9 12. Defendant DOES 1 through 50, are sued under fictitious names
10 pursuant to Code of Civil Procedure section 474 because Plaintiff does not know
11 their true names or capacities. Plaintiff will seek leave of court to amend this
12 Complaint and serve such fictitiously named Defendants when their names and
13 capacities are ascertained. Plaintiff is informed and believes, and thereon alleges,
14 that DOES 1 through 50 are or were the partners, agents, owners, shareholders,
15 managers, or employees of Defendants at all relevant times and were joint employers
16 with IHM3.

17 13. Plaintiff is informed and believes, and thereon alleges, that each
18 Defendant acted in all respects pertinent to this action as the agent of the other
19 Defendant, carried out a joint scheme, business plan, or policy in all respects
20 pertinent hereto, and the acts of each Defendant are legally attributable to the other
21 Defendants.

22 14. Plaintiff is informed and believes, and thereon alleges, that each
23 Defendant directly or indirectly, through agents or other persons or entities,
24 employed or otherwise exercised control over the wages, hours, and working
25 conditions of Plaintiff. Furthermore, each Defendant in all respects acted as the
26 employer and/or joint employer of Plaintiff and the Class Members.

27 15. Plaintiff is informed and believes, and thereon alleges, that each and all
28 of the acts and omissions alleged herein were performed by, or are attributable to,

1 Defendants and/or DOES 1 through 50, acting as the agent, alter ego, agent, servant,
2 joint venturer, co-conspirator, and/or partner for the other, within a common
3 enterprise and legal authority to act on the other's behalf. The acts of any and all
4 Defendants were in accordance with, and represent, the official policy of
5 Defendants.

6 16. At all relevant times, Defendants, and each of them, acted within the
7 scope of such agency or employment, or ratified each and every act or omission
8 complained of herein. At all relevant times, Defendants, and each of them, aided and
9 abetted the acts and omissions of each and all the other Defendants in proximately
10 causing the damages herein alleged.

11 17. Plaintiff is informed and believes, and thereon alleges, that each of said
12 Defendants is in some manner intentionally, negligently, and/or otherwise
13 responsible for the acts, omissions, occurrences, and transactions alleged herein.

14 **CLASS ALLEGATIONS**

15 18. Plaintiff brings this class action pursuant to Federal Rules of Civil
16 Procedure 23 on behalf of herself and all others similarly situated who were injured
17 by Defendants' violations of the Labor Code, Business and Professions Code
18 sections 17200, *et seq.*, and IWC Wage Orders during the Class Period.

19 19. Plaintiff's proposed Class consists of and is defined as follows:

20 Class

21 All current and former non-exempt employees employed by
22 Defendants in the State of California within four years prior to
23 the filing of this action to the date of class certification.

24 20. Plaintiff also seeks to certify the following Subclass:

25 Waiting Time Subclass

26 All Class Members who separated from their employment with
27 Defendants at any time within three years prior to the filing of
28 this action to the date of class certification ("Subclass" or

“Waiting Time Subclass”).

21. Members of the Class and Subclass described above will be collectively referred to as “Class Members.”

22. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish additional subclasses, or modify or re-define any class or subclass definition as appropriate based on investigation, discovery, and specific theories of liability.

23. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable.

24. **Commonality:** This action has been brought and may properly be maintained as a class action under the Federal Rules of Civil Procedure 23 because there are common questions

of law and fact as to the Class Members that predominate over any questions affecting only individual members including, but not limited to, the following:

- (a) Whether Defendants practices and policies violated California’s quota laws by enacting quotas or production demands in violation of Labor Code section 2100-2112
- (b) Whether Defendant violated California’s reporting time pay rules.
- (c) Whether Defendants’ rounding policy and practice favored Defendants by systematically undercompensating Plaintiff and Class Members;
- (d) Whether Defendants compensated Plaintiff and Class Members for time spent during rest periods and/or meal periods while under the control of IHM3 during split shifts;
- (e) Whether Defendants paid Plaintiff and Class Members the legal split-shift premium;
- (f) Whether Defendants required Plaintiff and Class Members to work off-the-clock without compensation;

- (g) Whether Defendants required Plaintiff and Class Members to incur business expenses without reimbursement;
- (h) Whether Defendants provided Plaintiff and Class Members with compliant meal periods or paid compensation in lieu thereof;
- (i) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and Class Members or paid compensation in lieu thereof;
- (j) Whether Defendants paid Plaintiff and Class Members for rest periods or paid compensation in lieu thereof;
- (k) Whether Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements;
- (l) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages due immediately upon termination or within 72 hours of resignation;
- (m) Whether Defendants' conduct was willful or reckless; and
- (n) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*

25. There is a well-defined community of interest. Further, Plaintiff and Class Members have suffered common injuries as a result of Defendants' systemic employment policies and practices. Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly. In addition, answers to common questions raised in this Complaint will advance resolution of each individual Class Member's claims.

26. **Numerosity:** The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than 300 individuals.

27. **Ascertainability:** The identities of the Class Members are readily

ascertainable by inspection of Defendants' employment and payroll records.

28. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by Class Members because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

29. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of the Class Members.

30. **Superiority:** The nature of this action makes use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently manage this case as a class action.

31. **Public Policy Considerations:** Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means.

1 Class actions provide class members who are not named in the complaint with a type
2 of anonymity that allows for the vindication of their rights while affording them
3 privacy protections.

4 **GENERAL ALLEGATIONS**

5 32. **Background:** At all relevant times mentioned herein, Defendants
6 employed Plaintiff and other persons as non-exempt employees at Defendants'
7 locations within California. Defendants employed Plaintiff in a non-exempt position
8 during his employment and continue to employ nonexempt employees within
9 California.

10 33. Plaintiff is informed and believes, and thereon alleges, that at all times
11 herein mentioned, Defendants were advised by skilled lawyers, employees, and
12 other professionals who were knowledgeable about California's wage and hour laws,
13 employment and personnel practices, and the requirements of California law.

14 34. Plaintiff is informed and believes, and thereon alleges, that Defendants
15 knew or should have known they had a duty to compensate Plaintiff and Class
16 Members, and Defendants had the financial ability to pay such compensation but
17 willfully, knowingly and intentionally failed to do so all in order to increase
18 Defendants' profits.

19 35. Plaintiff is informed and believes, and thereon alleges, that Defendants
20 knew or should have known they imposed systematic quota and production demands
21 on Plaintiff and Class Members which violated the rights of employees pursuant to
22 Labor Code sections 2100 et. seq. IHM3 had a duty to ensure its production demands
23 did not interfere with Plaintiff and Class Members right to lawful meal periods, rest
24 periods, bathroom breaks, and/or expose them to safety hazards. IHM3 willfully,
25 knowingly and intentionally failed to establish quotas that did not harm Plaintiff and
26 Class Members all in order to increase Defendants' profits without concern for
27 employee safety.

28 36. **Unpaid Wages:** Plaintiff is informed and believes, and thereon alleges,

1 that Defendants knew or should have known that Plaintiff and Class Members were
2 entitled to receive at least minimum, regular, overtime, and double times wages and
3 that they were not receiving minimum, regular, overtime, and double time wages for
4 all work that was required to be performed. During the Class Period, Plaintiff and
5 Class Members regularly worked in excess of eight (8) hours in a workday and/or
6 40 hours in a workweek, and double time for all hours worked in excess of 12 hours
7 in a workday. In violation of the Labor Code and IWC Wage Orders, Defendants
8 rounded, edited, and/or input the incorrect times for Plaintiff's and Class Members'
9 start times to reflect the scheduled start time instead of the actual start time which
10 should have included time spent arriving early to work, and performing other
11 preliminary duties and postliminary duties, and otherwise preparing for the workday.
12 Defendants also rounded Plaintiff's and Class Members' end time to reflect the
13 scheduled end time despite working past those hours. As such, Plaintiff and Class
14 Members performed work off-the-clock without compensation. Plaintiff and Class
15 Members were not paid a split shift premium and were required to work shifts which
16 were sufficiently long and were counted as "meal period" and "rest periods." While
17 under the control of IHM3 they remained under the control of Defendant and were
18 not paid the split shift interval. Defendants failed to compensate Plaintiff and Class
19 Members for all hours worked for work performed off-the-clock and for reporting
20 time pay, and overtime pay. Defendants failed to pay the appropriate and correct
21 legal wages for bonus pay (i.e., premium pay, sick pay, vacation pay, overtime and
22 double overtime) and vacation pay according to California law. Defendant violated
23 Labor Code section 351 by illegally withholding tips and or engaging a tip pooling
24 scheme with managers and other individuals not in the chain of service or who were
25 involved in table services;

26 **37. Meal Period Violations:** Plaintiff is informed and believes, and
27 thereon alleges, that Defendants knew or should have known that Plaintiff and Class
28 Members were entitled to receive a timely, off-duty, uninterrupted 30-minute meal

1 period for every five hours of work, or payment of one additional hour of pay at their
2 regular rate of pay when they did not receive a compliant meal period. Defendant
3 enacted quotas that prevented Plaintiff and Class Members from taking lawful meal
4 periods. During the Class Period, Plaintiff and Class Members regularly worked in
5 excess of five (5) and/or 10 hours per workday. In violation of the Labor Code and
6 IWC Wage Orders, Plaintiff and Class Members did not receive compliant meal
7 periods. As such, Defendants failed to provide all required meal period, including
8 second meal periods when Plaintiff and Class Members worked in excess of 10 hours
9 per workday. Even though Plaintiff and other Class Members were prevented from
10 taking compliant meal periods, Defendants failed to provide them with premium pay
11 for every non-compliant meal period.

12 **38. Rest Period Violations:** Plaintiff is informed and believes, and thereon
13 alleges, that Defendants knew or should have known that Plaintiff and Class
14 Members were entitled to receive a ten-minute, off-duty, uninterrupted rest period
15 for every four (4) hours worked, or major fraction thereof, or payment of one (1)
16 additional hour of pay at their regular rate of pay when they were not permitted to
17 take a compliant rest period. Defendant enacted quotas that prevented Plaintiff and
18 Class Members from taking lawful rest periods. During the Class Period, Plaintiff
19 and Class Members regularly worked in excess of four (4) hours or major fraction
20 thereof. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
21 Members were not permitted to take compliant rest breaks, due to Defendants'
22 unlawful policy and practice to favor production goals over employee rights.
23 Consequently, Plaintiff and Class Members were not authorized or permitted to take
24 rest breaks, including first, second, and third rest breaks. Defendants failed to pay
25 Plaintiff and Class Members one additional hour of pay at their regular rate of pay
26 when they did not receive a compliant rest break.

27 **39. Waiting Time Penalties:** Plaintiff is informed and believes, and
28 thereon alleges, that Defendants knew or should have known that Plaintiff and

1 Waiting Time Subclass Members who separated from their employment with
2 Defendants during the statutory period were entitled to timely payment of all wages
3 due. In violation of the Labor Code, Plaintiff and Waiting Time Class Members did
4 not receive payment of all wages owed upon separation within the permissible time
5 period due to, *inter alia*, Defendants' failure to pay all wages and meal and rest
6 period premiums to Plaintiff and Class Members.

7 40. **Wage Statement Violations:** Plaintiff is informed and believes, and
8 thereon alleges that Defendants knew or should have known that Plaintiff and Class
9 Members were entitled to receive complete and accurate wage statements. In
10 violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members
11 were not furnished with complete and accurate wage statements that show all of the
12 information required by Labor Code section 226, including, but not limited to, the
13 gross and net wages earned, the total hours worked, all applicable hourly rates in
14 effect during the pay period, and the corresponding number of hours worked at each
15 hourly rate.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY ALL WAGES**

18 **(Plaintiff and the Class Against all Defendants)**

19 41. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
20 above as though fully set forth herein.

21 42. At all times herein relevant, Defendants had a duty to comply with
22 Labor Code sections 204, 206, 227.3, 510, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
23 the applicable IWC Wage Orders, and all applicable local minimum wage
24 ordinances in effect throughout California.

25 43. Labor Code section 204 and the IWC Wage Orders require timely
26 payment of all wages owed on regularly scheduled paydays at least twice during
27 each calendar month, on days designated in advance by the employer as the regular
28 paydays. All wages earned in excess of the normal work period must be paid no

1 later than the payday for the next regular payroll period.

2 44. Labor Code section 206 provides that in case of a dispute over wages,
3 the employer shall pay, without condition and promptly under the Labor Code all
4 wages conceded due, leaving to the employee all remedies he/she is otherwise
5 entitled to as to any balance claimed.

6 45. The IWC Wage Orders define “hours worked” as “the time during
7 which an employee is subject to the control of an employer and includes all time the
8 employee is suffered or permitted to work, whether or not required to do so”
9 including non productive time and legal wages when bonuses were paid.

10 46. Defendant failed to pay the correct reporting time pay in accordance
11 with California law.

12 47. Defendants further violated Labor Code section 351 through its illegal
13 pool tipping and tip forfeiture policy illegally withholding wages of tipped
14 employees.

15 48. Defendant further failed to pay the legal rate for sick pay, vacation pay,
16 and premium pay when it paid bonuses.

17 49. Labor Code section 510 and the IWC Wage Orders require that
18 employers pay employees for all overtime hours at a rate of one and one-half times
19 the employee’s regular rate of pay for hours worked in excess of eight hours in one
20 workday, 40 hours in one workweek, and after the first eight hours on the seventh
21 consecutive workday in one work week. Labor Code section 510 and the IWC Wage
22 Orders further require that employers pay employees double their regular rate of pay
23 for hours work in excess of 12 hours in a workday and after eight hours on the
24 seventh consecutive workday in one workweek. Labor Code section 510 requires
25 payment of overtime wages at one and one half times the “regular rate of pay,”
26 including split shift premium pay, reporting time pay, sick pay, and vacation pay.

27 50. Labor Code section 1182.12 sets forth the minimum hourly wage that
28 must be paid to all employees in California for all hours worked. Local minimum

1 wage ordinances, may provide for higher minimum wage rates that must be paid to
2 employees for all hours worked in those locales where each local ordinance is in
3 effect. Labor Code section 1197 affirms that it is unlawful to pay less than the state
4 or local minimum wage, whichever is higher, for any hour of work.

5 51. Labor Code section 1194 requires that employers pay employees at
6 least the legal minimum wage rate for all hours worked, notwithstanding any
7 agreement to work for a lesser wage. Labor Code section 1194 further authorizes
8 any employee receiving less than the legal minimum wage applicable to the
9 employee to recover in a civil action the unpaid balance of the full amount of wages,
10 along with interest thereon, reasonable attorneys' fees and costs of suit.

11 52. Labor Code section 1194.2 authorizes the recovery of liquidated
12 damages in an amount equal to the wages unlawfully unpaid and interest thereon for
13 unpaid wage violations.

14 53. Labor Code section 1198 prohibits employers from employing for
15 longer hours or less favorable conditions than those set forth in the Labor Code, IWC
16 Wage Orders, or as otherwise set by the Labor Commissioner.

17 54. During the relevant time period, Defendants failed to pay Plaintiff and
18 Class Members all wages due, including minimum, regular, overtime, and double
19 time wages due to Defendants' unlawful rounding practice, failure to provide
20 compensation for off-the-clock work, and failure to compensate drive time, among
21 other things.

22 55. In violation of California law, Defendants have knowingly and willfully
23 refused to perform their obligations and compensate Plaintiff and Class Members
24 for all wages earned as alleged above.

25 56. Defendants' failure to pay Plaintiff and Class Members all earned
26 minimum and regular wages in accordance with Labor Code sections 204, 206, 510,
27 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all
28 applicable local minimum wage ordinances in effect throughout California, Plaintiff

1 and Class Members are entitled to recover the full amount of unpaid wages,
2 liquidated damages, prejudgment interest, and statutory penalties, along with
3 attorneys' fees and costs in amounts that will be established at trial.

4 **SECOND CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(Plaintiff and the Class Against all Defendants)**

7 57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
8 above as though fully set forth herein.

9 58. At all relevant times, Defendants had a duty to comply with Labor Code
10 sections 226.7 and 512, and the applicable IWC Wage Orders.

11 59. Labor Code section 512 and the IWC Wage Orders prohibit an
12 employer from employing any person for a work period of more than 5 hours per
13 day without providing the employee with a meal period of not less than 30 minutes
14 (commencing before the employee's fifth hour of work), except that if the total work
15 period per day is no more than 6 hours, the meal period may be waived by mutual
16 consent of the employer and employee. A second meal period of not less than 30
17 minutes is required if an employee works more than 10 hours per day and must begin
18 before the employee's tenth hour of work, except if the total hours worked is no
19 more than 12 hours, the second meal period may be waived by mutual consent of the
20 employer and employee, but only if the first meal period was not waived. An
21 employer must relieve an employee of all duties during meal periods.

22 60. The applicable IWC Wage Orders state that "[u]nless the employee is
23 relieved of all duty during a 30-minute meal period, the meal period shall be
24 considered an 'on duty' meal period and counted as time worked."

25 61. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an
26 employer from requiring any employee to work during a meal period mandated by
27 any California statute, regulation, standard or order. If an employer fails to provide
28 an employee with a meal period in accordance with state law, Labor Code section

1 226.7(c) and the IWC Wage Orders require that the employer pay the employee one
2 additional hour of pay at the employee's regular rate of compensation for each
3 workday that the meal period is noncompliant.

4 62. During the Class Period, Plaintiff and Class Members did not receive
5 compliant meal periods when working more than five (5) and/or 10 hours per day
6 because Defendants provided only about two (1) rest breaks per workweek. As such,
7 Defendants failed to provide Plaintiff and Class Members with all required meal
8 periods, including second meal periods.

9 63. During the relevant time period, Defendants failed to pay Plaintiff and
10 Class Members meal period premiums for noncompliant meal periods pursuant to
11 Labor Code section 226.7(b) and the applicable IWC Wage Order.

12 64. As a result of Defendants' failure to provide compliant meal periods
13 and pay meal period premiums to Plaintiff and Class Members in accordance with
14 the IWC Wage Orders and Labor Code sections 226.7 and 512, Plaintiff and Class
15 Members suffered and continue to suffer a loss of wages and compensation.

16 65. Because Plaintiff and Class Members were and/or are entitled to such
17 meal periods or "premium pay" in lieu thereof, they are entitled to such payment per
18 shift in an amount according to proof. To the extent such unpaid premiums are
19 deemed unpaid wages, Plaintiff will also seek pre- and post-judgment interest as
20 provided by law at 10% per annum, in an amount according to proof.

21 66. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will
22 seek attorneys' fees and costs from Defendants in an amount subject to proof and
23 approved by the Court.

24 **THIRD CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **(Plaintiff and the Class Against all Defendants)**

27 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
28 above as though fully set forth herein.

1 68. At all relevant times, Defendants had a duty to comply with Labor Code
2 section 226.7 and the applicable IWC Wage Orders.

3 69. The IWC Wage Orders require employers to authorize and permit all
4 employees to take 10-minute duty-free rest periods for each four hours worked, or
5 major fraction thereof.

6 70. If an employer fails to provide an employee with a rest period in
7 accordance with California law, Labor Code section 226.7(c) and the IWC Wage
8 Orders require that the employer pay the employee one additional hour of pay at the
9 employee's regular rate of compensation for each workday that the rest period is
10 noncompliant.

11 71. During the relevant time period, Defendants did not implement a
12 compliant rest break policy or practice by providing only one (1) break per workday.
13 As such, Defendants failed to provide Plaintiff and Class Members with all required
14 rest periods, including second and third rest periods.

15 72. During the relevant time period, Defendants failed to pay Plaintiff and
16 Class Members rest period premiums for noncompliant rest periods pursuant to
17 Labor Code section 226.7(b) and the applicable IWC Wage Order.

18 73. As a result of Defendants' failure to provide compliant rest periods and
19 pay rest period premiums to Plaintiff and Class Members in accordance with the
20 IWC Wage Orders and Labor Code sections 226.7 and 516, Plaintiff and Class
21 Members suffered and continue to suffer a loss of wages and compensation.

22 74. Because Plaintiff and Class Members were and/or are entitled to such
23 rest periods or "premium pay" in lieu thereof, they are entitled to such payment per
24 shift in an amount according to proof. To the extent such unpaid premiums are
25 deemed unpaid wages, Plaintiff will also seek pre- and post-judgment interest as
26 provided by law at 10% per annum, in an amount according to proof.

27 75. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will
28 seek attorneys' fees and costs from Defendants in an amount subject to proof and

1 approved by the Court.

2 **FOURTH CAUSE OF ACTION**
3 **(FAILURE TO REIMBURSE FOR BUSINESS EXPENSES)**

4 **(Plaintiff and the Class Against all Defendants)**

5 76. Plaintiff incorporates all previous paragraphs of this Complaint as
6 though fully set forth herein.

7 77. Pursuant to Labor Code §2802, Defendants are required to reimburse
8 Plaintiff for business expenses incurred in the direct consequences of her discharge
9 of her duties for Defendants, including expenses associated with the use of cell
10 phones.

11 78. Within the four years before the filing of this Complaint and continuing
12 until the present time, Plaintiff has been required to incur expenses as a condition of
13 and in the discharge of her employment duties and has thereby incurred expenses for
14 these items.

15 79. Defendant has failed to reimburse Plaintiff for said expenses.

16 80. Pursuant to Labor Code, section 2802, subsection (a), Plaintiff will seek
17 to recover work related expenses for herself and the putative class. Pursuant to Labor
18 Code, section 2802, subsection (b), Plaintiff will seek attorneys' fees and litigation
19 costs in an amount subject to proof and approved by the Court.

20 **FIFTH CAUSE OF ACTION**
21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
22 **(Plaintiff and the Class Against all Defendants)**

23 81. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
24 above as though fully set forth herein.

25 82. At all relevant times, Defendants had a duty to comply with Labor Code
26 section 226.

27 83. Labor Code section 226(a) requires that, semimonthly or at the time of
28 each payment of wages, employers must furnish each employee with an accurate

1 itemized wage statement in writing that accurately shows (1) gross wages earned,
2 (2) total number of hours worked, (3) the number of any piece-rate units earned and
3 all applicable piece rates, (4) all deductions made from wages, (5) net wages earned,
4 (6) the inclusive dates of the pay period, (7) the name and last four digits or
5 employment identification number of the employee, (8) the name and address of the
6 legal entity that is the employer, and (9) all applicable hourly rates in effect and the
7 corresponding number of hours worked at each hourly rate. Defendants failed to
8 include all hours worked and accumulated vacation, sick pay and hours worked.
9 Defendant failed to include all earned tips, split shifts and record reporting time pay.

10 84. Labor Code section 226(e)(1) authorizes an employee suffering injury
11 as a result of a knowing and intentional failure by an employer to provide an accurate
12 itemized wage statement to recover the greater of all actual damages or \$50 for the
13 initial pay violation and \$100 for each violation in a subsequent pay period, not to
14 exceed an aggregate penalty of \$4,000 per employee, in addition to an award of costs
15 and attorneys' fees.

16 85. During the relevant time period, Defendants have knowingly and
17 intentionally failed to comply with Labor Code section 226(a) on wage statements
18 that were provided to Plaintiff and Class Members. The deficiencies include, among
19 other things, Defendants' failure to correctly state the gross and net wages earned,
20 the total hours worked, all applicable hourly rates in effect during the pay period,
21 and the corresponding number of hours worked at each hourly rate.

22 86. As a result of Defendants' violation of California Labor Code section
23 226(a), Plaintiff and Class Members have suffered injury and damage to their
24 statutorily protected rights. Specifically, Plaintiff and Class Members have been
25 injured by Defendants' intentional violation of California Labor Code section 226(a)
26 because they were denied both their legal right to receive, and their protected interest
27 in receiving, accurate itemized wage statements under California Labor Code section
28 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the

1 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
2 Plaintiff would not have had to engage in these efforts and incur these costs had
3 Defendants provided the accurate wages earned. This has also delayed Plaintiff's
4 ability to demand and recover the underpayment of wages from Defendants.

5 87. Defendants' violations of California Labor Code section 226(a)
6 prevented Plaintiff and Class Members from knowing, understanding and disputing
7 the wages paid to them, and resulted in an unjustified economic enrichment to
8 Defendants. As a result of Defendants' knowing and intentional failure to comply
9 with California Labor Code section 226(a), Plaintiff and Class Members have
10 suffered an injury, and the exact amount of damages and/or penalties is all in an
11 amount to be shown according to proof at trial.

12 88. Plaintiff and Class Members are also entitled to injunctive relief under
13 California Labor Code section 226(h), compelling Defendants to comply with
14 California Labor Code section 226, and seek the recovery of attorneys' fees and costs
15 incurred in obtaining this injunctive relief.

16 **SIXTH CAUSE OF ACTION**

17 **WAITING TIME PENALTIES**

18 **(Plaintiff and the Class Against all Defendants)**

19 89. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
20 above as though fully set forth herein.

21 90. At all relevant times, Defendants had a duty to comply with Labor Code
22 sections 201, 202, and 203. Defendants failed to comply with these final paycheck
23 requirements with respect to Plaintiff and Waiting Time Subclass Members.

24 91. Labor Code section 201 requires that if an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable
26 immediately.

27 92. Labor Code section 202 requires that if "an employee not having a
28 written contract for a definite period" quits, the employee's wages shall become due

1 and payable no later than 72 hours thereafter, unless the employee has given 72 hours
2 previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.

4 93. Labor Code section 203 provides that if an employer willfully fails to
5 pay, without abatement or reduction, any wages of an employee who is discharged
6 or quits, the wages of the employee shall continue as a penalty from the due date
7 thereof at the same rate until paid or until an action therefor is commenced, but that
8 the wages shall not continue for more than 30 days per employee.

9 94. During the relevant time period, Defendants willfully failed to pay
10 Waiting Time Subclass Members all their earned wages upon termination including,
11 but not limited to, minimum, regular, overtime, and double time compensation, and
12 premium compensation either at the time of discharge or within 72 hours of leaving
13 Defendants' employ.

14 95. As a result of Defendants' failure to timely pay all wages owed to
15 Plaintiff and Waiting Time Subclass Members in accordance with Labor Code
16 sections 201, 202 and 203, Plaintiff and Waiting Time Subclass Members are
17 entitled to recover waiting time penalties, prejudgment interest, attorneys' fees, and
18 costs in amounts that will be established at trial.

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA'S QUOTA LAW**

21 **(Plaintiff and the Class Against all Defendants)**

22 96. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
23 above as though fully set forth herein.

24 97. At all relevant times, Defendants had a duty to comply with Labor Code
25 §§ 2100, *et seq.*

26 98. California's quota laws require Defendant to implement and maintain
27 quota and production demands consistent with Labor Code sections 2100 – 2112.
28 The code sections require the following:

LABOR CODE SECTION 2100

(d) “Employee” means a nonexempt employee who works at a warehouse distribution center.

(e)

(1) “Employee work speed data” means information an employer collects, stores, analyzes, or interprets relating to an individual employee’s performance of a quota, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.

(2) “Employee work speed data” does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to Section 226, except for any content of those records that includes employee work speed data as defined in this part.

(f) “Employer” means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the

wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state. For purposes of this definition, all employees of an employer’s commonly controlled group, as that term is defined in Section 25105 of the Revenue and Taxation Code, shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state.

1 *(h) “Quota” means a work standard under which an employee is assigned or*
2 *required to perform at a specified productivity speed, or perform a quantified*
3 *number of tasks, or to handle or produce a quantified amount of material,*
4 *within a defined time period and under which the employee may suffer an*
5 *adverse employment action if they fail to complete the performance standard.*

6 *(1) “Warehouse distribution center” means an establishment as defined by*
7 *any of the following North American Industry Classification System (NAICS)*
8 *Codes, however that establishment is denominated:*

9 **LABOR CODE SECTION 2102**

10 *An employee shall not be required to meet a quota that prevents compliance*
11 *with meal or rest periods, use of bathroom facilities, including reasonable*
12 *travel time to and from bathroom facilities, or occupational health and safety*
13 *laws in the Labor Code or division standards. An employer shall not take*
14 *adverse employment action against an employee for failure to meet a quota*
15 *that does not allow a worker to comply with meal and rest periods, or*
16 *occupational health and safety laws in the Labor Code or division standards,*
17 *or for failure to meet a quota that has not been disclosed to the employee*
18 *pursuant to Section 2101.*

19 **LABOR CODE SECTION 2103**

20 *(b) Notwithstanding subdivision (a), consistent with existing law, meal and*
21 *rest breaks are not considered productive time unless the employee is*
22 *required to remain on call.*

23 99. Defendants’ violations of California Labor Code sections 2100 - 2112)
24 prevented Plaintiff and Class Members from knowing, understanding and disputing
25 the wages paid to them, meal and period violations, inability to take restroom breaks,
26 and exposed them to unreasonable health hazards and resulted in an unjustified
27 economic enrichment to Defendants. As a result of Defendants’ knowing and
28 intentional failure to comply with California Labor Code section 2100 et. seq.,

1 Plaintiff and Class Members have suffered an injury, and the exact amount of
2 damages and/or penalties is all in an amount to be shown according to proof at trial.

3 100. Plaintiff and Class Members are also entitled to injunctive relief under
4 California Labor Code section 2108, compelling Defendants to comply with
5 California Labor Code sections 2100 et. seq., and seek the recovery of attorneys'
6 fees and costs incurred in obtaining this injunctive relief.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES**

9 **(Plaintiff and the Class Against all Defendants)**

10 101. Plaintiff hereby re-alleges and incorporates by reference all paragraphs
11 above as though fully set forth herein.

12 102. Plaintiff brings this claim individually and on behalf of Class Members.

13 103. Business & Professions Code section 17200 (“UCL”) prohibits unfair
14 competition in the form of any unlawful, unfair, or fraudulent business act or
15 practice.

16 104. Business and Professions Code section 17204 allows “any person who
17 has suffered injury in fact and has lost money or property as a result of such unfair
18 competition” to prosecute a civil action for violation of the UCL.

19 105. Labor Code section 90.5, subdivision (a) states it is the public policy of
20 California to vigorously enforce minimum labor standards in order to ensure
21 employees are not required to work under substandard and unlawful conditions, and
22 to protect employers who comply with the law from those who attempt to gain
23 competitive advantage at the expense of their workers by failing to comply with
24 minimum labor standards.

25 106. Beginning at an exact date unknown to Plaintiff, but at least since the
26 date four years prior to the filing of this complaint, Defendants have committed acts
27 of unfair competition as defined by the Unfair Business Practices Act, by engaging
28 in the unlawful, unfair, and fraudulent business practices and acts described in this

1 complaint, including, but not limited to, violations of Labor Code sections 201-204,
2 206, 226, 226.7, 227.3, 351, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2100-
3 2112, 2802 as well as other statutes.

4 107. The violations of these laws and regulations, as well as of fundamental
5 California public policies protecting workers, serve as unlawful predicate acts and
6 practices for purposes of Business and Professions Code sections 17200 et seq.

7 108. As a result of these actions, Plaintiff, on information and belief, alleges
8 that Defendants are able to unfairly compete with other comparable companies in
9 the State of California in violation of Business & Professions Code sections 17000
10 et. seq. and sections 17200 et. seq. Due to these unlawful, unfair, and/or fraudulent
11 business practices, Defendants have gained a competitive advantage over other
12 comparable companies doing business in the State of California.

13 109. The victims of these unlawful, unfair, and/or fraudulent business
14 practices include, but are not limited to, Plaintiff, putative class members, competing
15 cannabis manufacturers in the State of California, and the general public. Plaintiff is
16 informed and believes, and thereon alleges, that Defendants performed the above-
17 mentioned acts with the intent of gaining an unfair competitive advantage and
18 thereby injuring Plaintiff, putative class members, other competitors, and the general
19 public.

20 110. Plaintiff's success in this action will enforce important rights affecting
21 the public interest and public policy. In this regard, Plaintiff sues on behalf of the
22 public as well as on behalf of herself.

23 111. Business and Professions Code sections 17203 provides that a court
24 may make such orders or judgments as may be necessary to prevent the use or
25 employment by any person of any practice which constitutes unfair competition.
26 Injunctive relief is necessary and appropriate to prevent Defendants from repeating
27 their unlawful, unfair, and fraudulent business acts and business practices alleged
28 above.

1 112. Business and Professions Code section 17203 provides that the Court
2 may restore to any person in interest, any money or property that may have been
3 acquired by means of such unfair competition. Plaintiff and the Class are entitled to
4 restitution pursuant to Business and Professions Code section 17203 for wages and
5 payments unlawfully withheld from employees, including the fair value of the meal
6 and rest periods and other losses alleged herein, during the four-year period prior to
7 the filing of this complaint. All remedies are cumulative pursuant to Business &
8 Professions Code section 17205.

9 113. Business and Professions Code section 17202 provides:
10 “Notwithstanding section 3369 of the Civil Code, specific or preventative relief may
11 be granted to enforce a penalty, forfeiture, or penal law in a case of unfair
12 competition.” Plaintiff and Class are entitled to enforce all applicable penalty
13 provisions of the Labor Code pursuant to Business and Professions Code section
14 17202.

15 114. Plaintiff requests injunctive relief pursuant to Business & Professions
16 Code section 17203 to enjoin Defendants from continuing the unfair/unlawful
17 business practices alleged herein.

18 115. Plaintiff herein takes upon enforcement of these laws and lawful claims.
19 There is a financial burden involved in pursuing this action. The action is seeking to
20 vindicate a public right, and it would be against the interests of justice to penalize
21 Plaintiff by forcing Plaintiff to pay attorneys’ fees from the recovery in this action.
22 Attorneys’ fees are appropriate pursuant to Code of Civil Procedure section 1021.5
23 and others.
24
25
26
27
28

NINTH CAUSE OF ACTION

**ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF
2004**

(Plaintiff and the Aggrieved Employees Against all Defendants)

116. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein as a claimant and on behalf of aggrieved employees.

117. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

118. Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3 on June 26, 2023 (LWDA-CM-964546-23). This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website.

119. Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part." More than 65 days has passed since Plaintiff submitted her PAGA notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff may amend the Complaint as a matter of right within this 60-day period as specified by Labor Code section 2699.3(a)(2)(C).

120. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action

1 brought by an aggrieved employee on behalf of herself and other current or former
2 employees pursuant to the procedures specified in Labor Code section 2699.3.

3 121. For all provisions of the Labor Code except those for which a civil
4 penalty is specifically provided, Labor Code section 2699(f) imposes upon
5 Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee
6 per pay period for the initial violation and two hundred dollars (\$200.00) for each
7 aggrieved employee per pay period for each subsequent pay period in which
8 Defendants violated these provisions of the Labor Code.

9 122. Defendants' conduct violates numerous Labor Code sections,
10 including, but not limited to, the claims and theories alleged and incorporated by
11 reference herein in the First through Eighth Causes of Action, as well as the
12 following:

- 13 a) Violation of Labor Code sections 201-204, 210, 510, 558, 1182.12,
14 1194, 1194.2, 1197, 1197.1, and 1198 for failure to timely pay all
15 earned wages (including minimum, regular, and overtime wages) owed
16 to Plaintiff and other aggrieved employees during employment and
17 upon separation of employment as herein alleged;
- 18 b) Violation of Labor Code sections 226.7, 512, and 558 for failure to
19 provide meal periods to Plaintiff and other aggrieved employees and
20 failure to pay premium wages for missed meal periods as herein
21 alleged;
- 22 c) Violation of Labor Code sections 226.7 and 558 for failure to permit
23 rest breaks to Plaintiff and other aggrieved employees and failure to pay
24 premium wages for missed rest periods as herein alleged;
- 25 d) Violation of Labor Code sections 226 and 226.3 for failure to provide
26 accurate itemized wage statements to Plaintiff and other aggrieved
27 employees as herein alleged; and,
28

1 e) Violation of Labor Code sections 1174 and 1174.5 for failure to
2 maintain accurate records regarding the employment of Plaintiff and
3 other aggrieved employees as herein alleged.

4 f) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
5 and other aggrieved employees for all reasonable and necessary
6 business expenses as herein alleged.

7 123. Further, Labor Code section 558(a) provides “[a]ny employer or other
8 person acting on behalf of an employer who violates, or causes to be violated, a
9 section of this chapter or any provision regulating hours and days of work in any
10 order of the Industrial Welfare Commission shall be subject to a civil penalty as
11 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
12 employee for each pay period for which the employee was underpaid . . . (2) For
13 each subsequent violation, one hundred dollars (\$100) for each underpaid employee
14 for each pay period for which the employee was underpaid.”

15 124. Labor Code section 1197.1 also provides “[a]ny employer or other
16 person acting either individually or as an officer, agent, or employee of another
17 person, who pays or causes to be paid to any employee a wage less than the
18 minimum fixed by an applicable state or local law, or by an order of the commission
19 shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is
20 intentionally committed, one hundred dollars (\$100) for each underpaid employee
21 for each pay period for which the employee is underpaid . . . (2) For each subsequent
22 violation for the same specific offense, two hundred fifty dollars (\$250) for each
23 underpaid employee for each pay period for which the employee is underpaid
24 regardless of whether the initial violation is intentionally committed.

25 125. As set forth above, Defendants have violated numerous provisions of
26 the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
27 Accordingly, Plaintiff also seeks the remedies set forth in Labor Code sections 558
28 and 1197.1 for herself, the underpaid employees, and the State of California.

126. Plaintiff is an “aggrieved employee” because she was employed by the alleged violators and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

127. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

128. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

129. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;
2. For appointment of Plaintiff, Teresa Garcia, as the class representative;
3. For appointment of Jose Garay, APLC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For damages, monetary relief, wages, premiums, benefits and penalties, including interest thereon;
7. For vacation pay pursuant to Labor Code section 227.3;
8. For expense reimbursements pursuant to Labor Code section 208;
9. For waiting time penalties pursuant to Labor Code section 203;

10. For split-shift premiums, according to proof;
11. For reporting time pay, according to proof;
12. For liquidated damages pursuant to Labor Code section 1194.2;
13. For unreimbursed expenses pursuant to Labor Code section 2802;
14. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
15. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code sections 17200 *et seq.*;
16. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;
17. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
18. For post judgment interest on all amounts awarded to Plaintiff and Class Members as provided by law;
19. For recovery of attorneys' fees and costs provided by Labor Code sections 226, 1194, and Code of Civil Procedure section 1021.5;
20. For injunctive relief pursuant to Labor Code section 2108;
21. For recovery of civil penalties under PAGA; and
22. For such other relief as the Court deems just and proper.

1 Dated: May 31, 2024

JOSE GARAY, APLC

2 By: /s/ Jose R. Garay

3 Jose R. Garay

4 Attorneys for Plaintiff

5 Teresa Garcia

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

8 Dated: May 31, 2024

JOSE GARAY, APLC

9 By: /s/ Jose R. Garay

10 Jose R. Garay

11 Attorneys for Plaintiff

12 Teresa Garcia