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Attorneys for Plaintiff SANDRO ORTEGA-DOMINGUEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SANDRO ORTEGA-DOMINGUEZ, in a
Representative capacity only, and on behalf
of other members of the general public
similarly situated

Plaintiff

v.

RGC GASLAMP, LLC, a Delaware Limited
Liability Company; PENDRY SAN DIEGO,
LLC, a Delaware Limited Liability Company;
MONTAGE HOTELS & RESORTS, LLC; a
Nevada Limited Liability Company; and
DOES 1-10, inclusive

Defendants

CASE NO. 37-2023-00036893-CU-OE-CTL

**DECLARATION OF RYAN T. KUHN IN
SUPPORT OF PLAINTIFF'S NOTICE OF
PLAINTIFF'S UNOPPOSED EX PARTE
APPLICATION *RE: PAGA SETTLEMENT*
APPROVAL**

Date: February 19, 2025

Time: 8:30 a.m.

Dept: C-60

Judge: Hon. Matthew C. Braner

1 I, Ryan T. Kuhn, declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for Plaintiff SANDRO ORTEGA-DOMINGUEZ, in a Representative capacity only, and
5 on behalf of other members of the general public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed *Ex Parte* Application Re: PAGA
7 Settlement Approval. I am personally familiar with the facts set forth in this declaration and,
8 if called to testify, could and would do so.
- 9 3. As this is a "PAGA" action only, the Limitations Period begins on June 21, 2019. There are
10 approximately **22,282** pay periods and **698** PAGA Members at issue.
- 11 4. Following the exchange of discovery, analysis of numerous sets of time and wage data,
12 mediation before Louis Marlin, Esq., and arms length negotiations subsequent to the October
13 31, 2024 Mediation, the Parties reached a proposed settlement that includes a payment of
14 penalties to the LWDA. Attached hereto as **Exhibit A** is a true and correct copy of the
15 Settlement Agreement.
- 16 5. Based on the below figures, each PAGA Member would receive an average payment of
17 approximately **\$86.32**. This figure represents an average only, as the actual amounts paid will
18 vary depending on the amount of workweeks employed during the PAGA period.
- 19 6. On **January 15, 2025**, Plaintiff's counsel gave the LWDA notice of the instant Settlement. To
20 date, Plaintiff's counsel has not received notice that the LWDA would intervene. Attached
21 hereto as **Exhibit B** is a true and correct copy of the "auto-generated" E-Mail received from
22 the LWDA.
- 23 7. On **January 28, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal
24 the Settlement Agreement and provided notice of the hearing date. To date, Plaintiff's counsel
25 has not received notice that the LWDA would intervene. Attached hereto as **Exhibit C** is a true
26 and correct copy of the "auto-generated" E-Mail received from the LWDA.
- 27 8. On **February 14, 2025**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal
28

copies of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. To date, Plaintiff's counsel has not received any opposition from the LWDA. Attached hereto as **Exhibit D** is a true and correct copy of the "auto-generated" E-Mail received from the LWDA.

9. The Total Value of the proposed Settlement is **\$397,500.00** which is broken down as follows:

- * **\$5,000.00** Settlement Administrator Fees;
- * **\$5,000.00** Representative Enhancement Bonus
- * **\$132,500.00** Attorneys' Fees (1/3 of total settlement value);
- * **\$14,000.00** Costs of Litigation.
- * Sub-Total of **\$241,000.00**. 75% (**\$180,750.00**) shall be assigned/paid to the LWDA as penalties.
- * The remaining 25% (**\$60,250.00**) in cash will be disbursed among all employees based on work weeks employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **\$86.32**.

10. There are no restrictions for any of the **698** employees to file individual actions, as the settlement agreement only covers PAGA claims.

11. The instant *Ex Parte* request is based on the fact that **(1)** the PAGA period "cutoff date" is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; **(2)** Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may change their mailing address without filing a proper "forwarding address")

12. An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The "fixes" provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendants (who admirably "stepped up" to address these issues) the opportunity to move on, and focus on future business.

13. Plaintiff alleges that he - and other employees - received "interrupted," "short," "late," or

“missing” Meal Periods, including those documented within Defendant’s Time Records. Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged he- and other employees -were not properly compensated due to Defendant’s failure to maintain accurate time records. Finally, Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies.

14. The catalyst of this litigation concerned allegations that Mr. Ortega-Dominguez was denied legally compliant meal and rest periods, and was not paid for all Overtime hours worked.

15. Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies and employee records were not in compliance with California law. However, these investigations also revealed that the “rate of violation” by Defendant was significantly less than 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the law.

16. Based on the above, the maximum liability in a case of this type would be in the range of **\$600,000.00 to \$700,000.00**.

17. Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). To confirm, Plaintiff’s counsel experienced the mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per violation), due to the efforts made by the employer to comply with the law.

18. Plaintiff’s counsel agrees with Her Honor, and with the provision of the Labor Code, that penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code.

19. As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that Defendant has agreed to make changes to its policies, and amend them to the extent they do not comply with California law.

20. Plaintiffs’ counsel, William B. Sullivan has approximately 30 years of experience in “class

1 action” litigation, both as plaintiff and defense counsel. Plaintiff’s counsel, Eric K. Yaeckel,
2 has over 14 years of experience prosecuting class and representative action claims under the
3 California Labor Code. Plaintiff’s Counsel, Ryan T. Kuhn, has over 6 years of experience
4 prosecuting class and representative action claims under the California Labor Code. Plaintiff’s
5 counsel, William B. Sullivan and Eric K. Yaeckel, are the attorneys of record in a matter that
6 was recently heard (and favorably decided) before the California Supreme Court titled
7 *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. The *Donohue* matter was a certified class
8 and PAGA action.

- 9 21. Plaintiff’s counsel were lead counsel on approximately 40 employment “wage and hour”
10 claims with class action, or representative action allegations. Based on said experience, it is
11 the opinion of Plaintiff’s counsel that this settlement represents a fair and adequate payment.
12 22. Defendant, and its counsel, deserve credit for their willingness to consider - and address - the
13 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in
14 “Wage and Hour” litigation) agreed to produce a substantial amount of documents and
15 information necessary to evaluate the parameters of settlement. Following the a full day
16 Mediation and arms-length negotiations, the parties have reached a proposed settlement that
17 includes a payment of penalties under PAGA.
18 23. The parties contend the settlement agreement amount is fair, adequate, and reasonable. The
19 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff’s
20 operative Complaint.
21 24. To date, Plaintiff has not received a response from the LWDA regarding the proposed
22 settlement. If the LWDA contacts Plaintiff’s counsel at any time prior to the February 19, 2025
23 hearing, Plaintiff’s counsel will provide an updated declaration to the Court.

24
25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct. Executed this 14th day of February, 2025 at San Diego, California.

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RYAN T. KUHN

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SANDRO ORTEGA-DOMINGUEZ, in a
Representative capacity only, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

vs.

RGC GAS LAMP, LLC, a Delaware Limited
Liability Company; PENDRY SAN DIEGO,
LLC, a Delaware Limited Liability Company;
MONTAGE HOTELS & RESORTS, LLC; a
Nevada Limited Liability Company; and
DOES 1-10, inclusive,

Defendants

Case No. 37-2023-00036893-CU-OE-CTL

Assigned for all purposes to:
Hon. Matthew C. Braner Dept C-60

PAGA SETTLEMENT AGREEMENT

1 This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff
2 SANDRO ORTEGA-DOMINGUEZ (“Plaintiff”) and Defendants RGC GAS LAMP, LLC
3 PENDRY SAN DIEGO, LLC, and MONTAGE HOTELS & RESORTS, LLC. (Hereinafter
4 “Defendants”). This Agreement refers to Plaintiff and Defendants collectively as “Parties,” or
5 individually as “Party.”

6 **1. DEFINITIONS.**

7 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations
8 against Defendant captioned *Sandro Ortega-Dominguez v. RGC Gaslamp, LLC et al.*, initiated on
9 August 25, 2023, and pending in Superior Court of the State of California, County of San Diego,
10 Case No. 37-2023-00036893-CU-OE-CTL.

11 1.2. “Administration Expenses Payment” means the amount the Administrator will be
12 paid from the Gross Settlement Amount to reimburse it for its reasonable fees and expenses in
13 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with
14 approval of this Settlement.

15 1.3. “Administrator” means CAC Services Group, LLC, the neutral entity the Parties
16 have agreed to appoint to administer the Settlement.

17 1.4. “Aggrieved Employee” means a person employed by Defendant PENDRY SAN
18 DIEGO, LLC in California and classified as a non-exempt who worked for Defendant during the
19 PAGA Period.

20 1.5. “Aggrieved Employee Address Search” means the Administrator’s investigation and
21 search for current Aggrieved Employee mailing addresses using all reasonably available sources,
22 methods and means including, but not limited to, the National Change of Address database, skip
23 traces, and direct contact by the Administrator with Aggrieved Employees.

24 1.6. “Aggrieved Employee Data” means Aggrieved Employee identifying information in
25 Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address,
26 Social Security number, and number of PAGA Pay Periods.

27 1.7. “Approval Order” means the proposed Court Order Granting Approval of PAGA
28 Settlement.

1 1.8. “Court” means the Superior Court of California, County of San Diego.

2 1.9. “Defendants” means Defendants RGC GAS LAMP, LLC PENDRY SAN DIEGO,

3 LLC, and MONTAGE HOTELS & RESORTS, LLC.

4 1.10. “Defense Counsel” means Chris Jalian, Esq. and Teresa Greider, Esq. of Paul

5 Hastings.

6 1.11. “Effective Date” means the latest of (i) expiration of all potential appeal periods

7 without the filing of a notice of appeal of the Court’s Judgment on its Order Approving the PAGA

8 Settlement; or (ii) final affirmance of the Court’s Judgment on its Order Approving the PAGA

9 Settlement by an appellate court as a result of any appeal(s), or (iii) final dismissal or denial of all

10 such appeals (including any petitions for review, rehearing, certiorari, etc.) such that the final

11 approval order and judgment is no longer subject to further judicial review.

12 1.12. “Gross Settlement Amount” means \$397,500.00 (Three Hundred and Ninety-Seven

13 Thousand dollars) which is the total amount Defendant agrees to pay under the Settlement. The

14 Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA

15 Payment, Plaintiff’s Enhancement Award, PAGA Counsel Fees Payment, PAGA Counsel Expenses

16 Payment, and the Administrator’s Expenses Payment.

17 1.13. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of

18 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved

19 Employee worked during the PAGA Period.

20 1.14. “Judgment” means the judgment entered by the Court.

21 1.15. “LWDA” means the California Labor and Workforce Development Agency, the

22 agency entitled, under *Labor Code* section 2699, subd. (i).

23 1.16. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA

24 under *Labor Code* section 2699, subd. (i).

25 1.17. “Net Settlement Amount” means the Gross Settlement Amount, less the following

26 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

27 Payment, Plaintiff’s Enhancement Awards, PAGA Counsel Fees Payment, PAGA Counsel

28 Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to

1 Aggrieved Employees as Individual PAGA Payments.

2 1.18. "PAGA Counsel" means Eric Yaeckel and Ryan Kuhn of Sullivan & Yaeckel Law
3 Group, APC, the attorneys representing Plaintiff in the Action.

4 1.19. "PAGA Counsel Fees Payment" and "PAGA Counsel Expenses Payment" mean the
5 amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses,
6 respectively, incurred to prosecute the Action.

7 1.20. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
8 worked for Defendant PENDRY SAN DIEGO, LLC for at least one day during the PAGA Period.

9 1.21. "PAGA Period" means the period from June 21, 2022, through Court approval.

10 1.22. "PAGA" means the Private Attorneys General Act (*Labor Code* §§ 2698. *et seq.*).

11 1.23. "PAGA Notice" means Plaintiff's June 21, 2023, letter to Defendant and the LWDA
12 providing notice pursuant to *Labor Code* section 2699.3, subd.(a).

13 1.24. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
14 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA
15 in settlement of PAGA claims.

16 1.25. "Plaintiff" means Sandro Ortega Dominguez, the named plaintiff in the Action.

17 1.26. "Plaintiff's Enhancement Award" means the amounts (not to exceed \$5,000 in total)
18 paid to Plaintiff as the PAGA representative.

19 1.27. "Released PAGA Claims" means the claims being released by Plaintiff and PAGA
20 Counsel and as described in Section 5 below.

21 1.28. "Released Parties" means: Defendants and each of their respective current and
22 former, direct and indirect owners, parents, subsidiaries, brother-sister companies, and all other
23 affiliates and related entities, and their current and former partners, officers, directors, shareholders,
24 owners, members, attorneys, insurers, employees, agents, predecessors, successors, assigns,
25 subsidiaries, affiliates, and other related parties.

26 1.29. "Settlement" means the disposition of the Action effected by this Agreement and the
27 Judgment.

1 **2. RECITALS.**

2 2.1. On August 25, 2023, Plaintiff commenced this Action by filing a Complaint alleging
3 a cause of action against Defendant for PAGA penalties based on alleged meal and rest break
4 violations, unpaid minimum wage, unpaid overtime compensation, inaccurate wage statements,
5 unreimbursed business expenses, and final pay violations. The “Operative Complaint” is the
6 operative complaint in the Action. Defendant denies the allegations in the Operative Complaint,
7 denies any failure to comply with the laws identified in the Operative Complaint, and denies any
8 and all liability for the causes of action alleged. Defendant further maintains that Plaintiff executed
9 a binding arbitration agreement, requiring individual arbitration of his individual PAGA claim.

10 2.2. Pursuant to *Labor Code* section 2699.3, subd.(a), Plaintiff gave timely written notice
11 to Defendant and the LWDA by sending the PAGA Notice.

12 2.3. On October 31, 2024, the Parties participated in an all-day mediation presided over
13 by Louis Marlin, Esq. The case did not settle on this date. Subsequent, arms-length discussions
14 between the Parties resulted in the Agreement to settle this action.

15 2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery, time
16 and pay records for putative Aggrieved Employees, and relevant documents and information related
17 to Defendants’ employment policies and practices. Plaintiff’s investigation was sufficient to satisfy
18 the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th
19 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130
20 (“*Dunk/Kullar*”).

21 **3. MONETARY TERMS.**

22 3.1. Gross Settlement Amount. Except as otherwise provided by Section 9 below,
23 Defendants promise to pay \$397,500.00 and no more as the Gross Settlement Amount. Defendants
24 have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1
25 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without
26 asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of
27 the Gross Settlement Amount will revert to Defendants.

28 3.2. Payments from the Gross Settlement Amount. The Administrator will make and

deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33 and 1/3% of the Gross Settlement Amount, which is currently estimated to be \$132,500.00, and PAGA Counsel Expenses Payment of not more than \$14,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Released Parties shall have no liability to PAGA Counsel or any other plaintiff's counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less than or the Court approves payment less than \$5,000.00, the Administrator will reallocate the remainder in the Net Settlement Amount.

3.2.3 To Plaintiff: Plaintiff's Enhancement Award not to exceed \$5,000 to be paid from the Gross Settlement Amount to Plaintiff as the PAGA Representative. Defendants will not oppose requests for Court approval of this payment provided that it does not exceed this amount. The Plaintiff's Enhancement Award will be issued using IRS 1099 Forms.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$241,000.00 to be paid from the Gross Settlement Amount, with 75% (\$180,750.00) allocated to the LWDA PAGA Payment and 25% (\$60,250.00) allocated to the Individual PAGA Payments.

1 3.2.6. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
2 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$60,250.00) by the total
3 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period
4 and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
5 Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual
6 PAGA Payment.

7 3.2.7. If the Court approves PAGA Penalties of less than the amount requested, the Administrator
8 will allocate the remainder to the Net Settlement Amount. The Administrator will report the
9 Individual PAGA Payments on IRS 1099 Forms.

10 **4. SETTLEMENT FUNDING AND PAYMENTS.**

11 4.1. Aggrieved Employee Data. Within twenty (20) business days of the date the Court
12 enters Judgment approving the settlement, Defendants will deliver the Aggrieved Employee Data to
13 the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee'
14 privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use
15 the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and
16 restrict access to the Aggrieved Employee Data to Administrator employees who need access to the
17 Aggrieved Employee Data to effect and perform under this Agreement. The Aggrieved Employee
18 Data will not be shared with PAGA Counsel or Plaintiff. Defendants have a continuing duty to
19 immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted
20 employee identifying information and to provide corrected or updated Aggrieved Employee Data
21 as soon as reasonably feasible. Without any extension of the deadline by which Defendants must
22 send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will
23 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
24 to missing or omitted Aggrieved Employee Data.

25 4.2. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
26 Settlement Amount by transmitting the funds to the Administrator no later than twenty (20) business
27 days after the Court's Judgment on its Order Approving the PAGA Settlement.

28 4.3. Payments from the Gross Settlement Amount. Within five (5) days after the

Effective Date, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, PAGA Counsel Fees Payment, the Bankruptcy Advisor Services Fee and the PAGA Counsel Expenses Payment.

4.3.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.3.3. For any Aggrieved Employee who's Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.3.4. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,

1 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and
2 assigns generally release and discharge Released Parties from all claims, transactions, or
3 occurrences that occurred during the PAGA Period, including but not limited to: (a) all claims that
4 were, or reasonably could have been, alleged, based on the facts contained in the Operative
5 Complaint and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any
6 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
7 benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at
8 any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in
9 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,
10 that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different
11 or additional facts or Plaintiff’s discovery of them.

12 5.1.1 Plaintiff’s Waiver of Rights Under California *Civil Code* Section 1542. For purposes
13 of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits,
14 if any, of section 1542 of the California *Civil Code*, which reads: “A general release does not extend
15 to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at
16 the time of executing the release, and that if known by him or her would have materially affected
17 his or her settlement with the debtor or Released Party.”

18 5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release,
19 on behalf of themselves and their respective former and present representatives, agents, attorneys,
20 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
21 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts
22 stated in the Operative Complaint and the PAGA Notice. This release includes, but is not limited
23 to, claims for civil penalties pursuant to PAGA for alleged violations of California Labor Code
24 sections 201, 202, 203, 226, 226(a), 226.7, 351, 353, 510, 512, 558, 1194, 1197, 1197.1, 1198,
25 1198.5, 1199, 2699 et seq., and 2802, and applicable Industrial Welfare Commission Orders.

26 5.3 Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
27 former attorneys, employees, agents, successors and assigns the Released Parties from all claims for
28 PAGA fees or costs incurred in connection with the Operative Complaint and any claims that were

1 or could have been asserted based on the facts stated in the Operative Complaint and the PAGA
2 Notice.

3 **6. MOTION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare
4 and file a motion for approval of this Settlement.

5 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
6 documents necessary for obtaining approval of this Settlement under *Labor Code* Section 2699,
7 subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a
8 signed declaration from the Administrator attaching its "not to exceed" bid for administering the
9 Settlement and attesting to its willingness to serve; competency; operative procedures for protecting
10 the security of Aggrieved Employee Data; all facts relevant to any actual or potential conflicts of
11 interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial
12 relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from
13 PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents
14 (initial notice of violations (*Labor Code* section 2699.3, subd. (a)), Operative Complaint (*Labor*
15 *Code* section 2699, subd.(l)(1)), this Agreement (*Labor Code* section 2699, subd. (l)(2)); and all
16 facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the
17 Administrator.

18 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
19 responsible for expeditiously finalizing and filing the application or motion for approval of this
20 Settlement no later than sixty (60) days after the full execution of this Agreement and, if necessary,
21 obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the
22 motion. PAGA Counsel is responsible for delivering the Court's Approval Order to the
23 Administrator.

24 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed motion for
25 approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and
26 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or
27 by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion
28 for approval of this Settlement or conditions its approval on any material change to this Agreement,

1 PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
2 meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy
3 the Court's concerns without increasing the Gross Settlement Amount.

4 **7. SETTLEMENT ADMINISTRATION.**

5 7.1 Selection of Administrator. The Parties have jointly selected CAC Services Group,
6 LLC to serve as the Administrator and verified that, as a condition of appointment, CAC Services
7 Group, LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified
8 in this Agreement in exchange for payment of Administration Expenses. The Parties and their
9 Counsel represent that they have no interest or relationship, financial or otherwise, with the
10 Administrator other than a professional relationship arising out of prior experiences administering
11 settlements.

12 7.2 Employer Identification Number. The Administrator shall have and use its own
13 Employer Identification Number for the purpose of providing reports to state and federal tax
14 authorities.

15 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
16 meets the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation
17 section 468B-1.

18 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks
19 to be performed or observed by the Administrator contained in this Agreement or otherwise.

20 **8. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry
21 of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
22 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration
23 matters, and (iii) addressing such post-Judgment matters as are permitted by law.

24 8.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
25 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA
26 Counsel Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the
27 Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions
28 to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal

1 does not include any waiver of the right to oppose such motions, writs, or appeals. If another party
2 appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended
3 until such time as the appeal is finally resolved and the Judgment becomes final.

4 **9. ADDITIONAL PROVISIONS.**

5 9.1 No Admission of Liability or Representative Manageability for Other Purposes. This
6 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this
7 Agreement is intended or should be construed as an admission by Defendant that any of the
8 allegations in the Operative Complaint have merit or that Defendant has any liability for any claims
9 asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's
10 defenses in the Action have merit. The Parties agree that representative treatment is for purposes of
11 this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant
12 reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest
13 Defendant's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action
14 will have no bearing on, and will not be admissible in connection with, any litigation (except for
15 proceedings to enforce or effectuate the Settlement and this Agreement).

16 9.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
17 Agreement together with its attached exhibits shall constitute the entire agreement between the
18 Parties relating to the Settlement, superseding any and all oral representations, warranties,
19 covenants, or inducements made to or by any Party.

20 9.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
21 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
22 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
23 effectuate its terms, and to execute any other documents reasonably required to effectuate the terms
24 of this Agreement including any amendments to this Agreement.

25 9.4 Cooperation. The Parties and their counsel will cooperate with each other and use
26 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
27 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
28 as requested by the Court. In the event the Parties are unable to agree upon the form or content of

1 any document necessary to implement the Settlement, or on any modification of the Agreement that
2 may become necessary to implement the Settlement, the Parties will seek the assistance of a
3 mediator and/or the Court for resolution.

4 9.5 No Prior Assignments. The Parties separately represent and warrant that they have
5 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
6 encumber to any person or entity and portion of any liability, claim, demand, action, cause of action,
7 or right released and discharged by the Party in this Settlement.

8 9.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel
9 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
10 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
11 10, as amended) or otherwise.

12 9.7 Modification of Agreement. This Agreement, and all parts of it, may be amended,
13 modified, changed, or waived only by an express written instrument signed by all Parties or their
14 representatives, and approved by the Court.

15 9.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure
16 to the benefit of, the successors of each of the Parties.

17 9.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
18 governed by and interpreted according to the internal laws of the state of California, without regard
19 to conflict of law principles.

20 9.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
21 of this Agreement. This Agreement will not be construed against any Party on the basis that the
22 Party was the drafter or participated in the drafting.

23 9.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
24 entered during Action and in this Agreement relating to the confidentiality of information shall
25 survive the execution of this Agreement.

26 9.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA
27 Counsel pursuant to California *Evidence Code* section 1152, and all copies and summaries of the
28 PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other

1 settlement negotiations, or in connection with the Settlement, may be used only with respect to this
2 Settlement, and no other purpose, and may not be used in any way that violates any existing
3 contractual agreement, statute, or rule of court. Not later than ninety (90) days after the
4 Administrator discharges its obligation to pay out of all Settlement funds, Plaintiffs shall destroy all
5 paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior
6 to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA
7 Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

8 9.13 Headings. The descriptive heading of any section or paragraph of this Agreement is
9 inserted for convenience of reference only and does not constitute a part of this Agreement.

10 9.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
11 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
12 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13 9.15 Notice. All notices, demands or other communications between the Parties in
14 connection with this Agreement will be in writing and deemed to have been duly given as of the
15 third business day after mailing by United States mail, or the day sent by email or messenger,
16 addressed as follows:

17 To Plaintiff:

18 Ryan T. Kuhn
19 ryan@sullivanlawgroupapc.com
20 Sullivan & Yaeckel Law Group, APC
21 2330 Third Avenue
22 San Diego, California 92101
23 (619) 702-6760

24 To Defendant:

25 Chris A. Jalian, Esq.
26 chrisjalian@paulhastings.com
27 Paul Hastings, LLP
28 515 South Flower Street, 25th Floor
29 Los Angeles, CA 90071-2228
30 (213) 683-6000

31 9.16 Execution in Counterparts. This Agreement may be executed in one or more
32 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this

1 Agreement shall be accepted as an original. All executed counterparts and each of them will be
2 deemed to be one and the same instrument if counsel for the Parties will exchange between their
3 signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence
4 and contents of this Agreement.

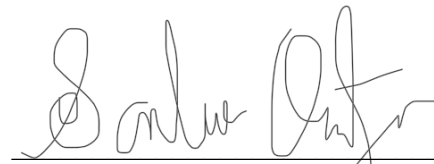
5 9.17 Representations Re Solvency and Ability to Fund. Defendant represents that its
6 business is solvent, and Defendant is able to pay the Settlement Amount within the time frame set
7 forth herein. Specifically, Defendant has reviewed its financial status in contemplation of this
8 Settlement Agreement and Defendant has determined it is able to comply with the Settlement.
9 Defendant agrees that the failure to review its financial status before entering this Settlement
10 Agreement shall be deemed an intentional misrepresentation. Defendant further affirms that it has
11 not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date
12 of this Settlement.

13 9.18 The PAGA Settlement Employees are estimated to include 698 individuals who
14 worked approximately 22,282 pay periods during the period from June 21, 2022 through November
15 13, 2024 (“Compensable Pay Periods”). If the actual number of Compensable Pay Periods during
16 the period from June 21, 2022 through November 13, 2024, is more than ten percent (10%) above
17 22,282, the Total Settlement Amount will be increased by the percentage that the actual number
18 exceeds 22,282 Compensable Pay Periods.

19 9.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the
20 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree
21 that, pursuant to *Code of Civil Procedure* section 583.330, the signing of this Agreement extends
22 the date to bring a case to trial under *Code of Civil Procedure* section 583.310 for the entire period
23 of this settlement process.

24
25 [SIGNATURES ON NEXT PAGE]
26
27
28

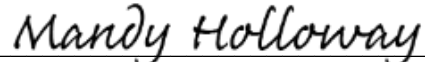
1 Dated: 01/14/2025


Plaintiff Sandro Ortega Dominguez

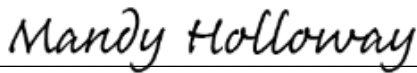
2
3
4 Dated: 1/27/2025


Defendant RGC GAS LAMP, LLC

5
6 Dated: 1/24/2025


Defendant PENDRY SAN DIEGO, LLC

7
8
9 Dated: 1/24/2025


Defendant MONTAGE HOTELS &
RESORTS, LLC

10
11
12 **Approved as to form:**

13
14 Dated: 1/15/24


Ryan T. Kuhn
Counsel for Plaintiff

15
16
17 Dated: 1/24/2025


Chris A. Jalian
Counsel for Defendants

EXHIBIT B

From: [DIR PAGA Unit](#)
To: [Ryan Kuhn](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Wednesday, January 15, 2025 11:39:16 AM

01/15/2025 11:38:53 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT C

From: [DIR PAGA Unit](#)
To: [Ryan Kuhn](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, January 28, 2025 2:42:47 PM

01/28/2025 02:42:25 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm