

PAGA SETTLEMENT AGREEMENT

Subject to court approval, this PAGA Settlement Agreement ("Agreement") is made by and between Ashley Nunez Estrada, individually and on behalf of others similarly situated (collectively, "Plaintiffs"), and Defendant Baxter Hotel Group, Inc. (hereinafter, "BHG"). The Agreement refers to Plaintiffs and BHG collectively as "Parties" or as a "Party."

1. DEFINITIONS.

1.1. "Action" means Plaintiffs' lawsuit alleging wage and hour violations against BHG captioned *Ashley Nunez Estrada v. Baxter Hotel Group, Inc.*, Case No. 37-2023-00052417-CU-OE-CTL, pending in San Diego County Superior Court.

1.2. "Address Search" means the Administrator's search for PAGA Members' mailing addresses using all reasonably available sources, including but not limited to the National Change of Address database, skip traces, and direct contact by the Administrator.

1.3. "Administrator" means Apex Class Action Administration.

1.4. "Administration Expenses" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its costs in accordance with the Administrator's bid to be submitted to the Court. The Administration Expenses shall not exceed \$5,500, except for a showing of good cause and as approved by the Court.

1.5. "Attorneys' Fees" mean the amounts allocated to Plaintiffs' Counsel for reimbursement of reasonable attorneys' fees in connection with this Settlement in an amount not to exceed 33.33% of the Gross Settlement Amount.

1.6. "Court" means the San Diego County Superior Court.

1.7. "Defense Counsel" means captioned counsel of record from the law firm of Higgs Fletcher & Mack LLP.

1.8. "Effective Date" means the date on which the Court enters Judgment on its order granting approval of the PAGA settlement.

1.9. "Employee Data" means identifying information in BHG's possession regarding the PAGA Members, including their names, last-known mailing addresses, Social Security numbers, and the number of PAGA Periods they have worked for BHG in a non-exempt capacity during the PAGA Period.

1.10. "Gross Settlement Amount" means \$160,000, which is the total amount BHG agrees to pay under the Settlement, subject to the terms and conditions of this Settlement.

1.11. "Individual PAGA Payments" means the PAGA Members' pro rata share of the Net PAGA Payment, calculated according to the number of PAGA Pay Periods.

1.12. "Individual Settlement Payments" means the Individual PAGA Payments.

1.13. “Judgment” means the judgment entered by the Court based upon the Final Approval of the Settlement.

1.14. “Litigation Costs” means the amount incurred by Plaintiffs’ Counsel to prosecute the Action, according to proof and subject to Court approval, not to exceed \$15,000.

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

1.16. “LWDA Payment” means the 75% share of the PAGA Payment allocated to be paid to the LWDA under Labor Code section 2699, subd. (i).

1.17. “Net Settlement Amount” means the Net PAGA Payment in PAGA only actions for purposes of this Agreement.

1.18. “Net PAGA Payment” means the 25% share of the PAGA Payment allocated to be paid to the PAGA Employees under Labor Code section 2699, subd. (i).

1.19. “Operative Complaint” means the most recently filed complaint, including amended complaints, filed by Plaintiff.

1.20. “PAGA” means California’s Private Attorneys General Act of 2004.

1.21. “PAGA Period” means September 25, 2022 through August 17, 2024.

1.22. “PAGA Payment” means the sum presently estimated at \$71,672, which is the amount provided in exchange for the release of the PAGA claims addressed in this Settlement, and which shall be paid from the Gross Settlement Amount, with 75% of the PAGA Payment constituting the LWDA Payment, with the remaining 25% constituting the Net PAGA Payment to be allocated and paid to PAGA Members. Based on variance in the Litigation Costs, Attorneys’ Fees, and/or Administration Expenses, the PAGA Payment may increase or decrease accordingly, and Plaintiff’s Counsel will apprise the Court accordingly when the Settlement is presented for Court approval.

1.23. “PAGA Counsel” or “Plaintiffs’ Counsel” means Ferraro Vega Employment Lawyers, Inc.

1.24. “PAGA Members” means all individuals currently or formerly employed by BHG in California as hourly, non-exempt employees during the PAGA Period.

1.25. “PAGA Notice” means Named Plaintiff’s letter to BHG and the LWDA, including any amendments thereto, pursuant to Labor Code § 2699.3(a).

1.26. “PAGA Pay Period” means any pay period during which a PAGA Member worked for BHG for at least one day during the PAGA Period.

1.27. “PAGA Pay Period Estimate” means, based on a review of BHG’s records to date, a total of 3,984 PAGA Pay Periods.

1.28. “PAGA Representative” or “Named Plaintiff” refers to Ashley Nunez Estrada.

1.29. “Released Claims” means the claims being released in connection with this Settlement, as set forth in full below.

1.30. “Released Parties” means: BHG and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.31. “Service Payment” means the payment to the named Plaintiff for initiating and providing services in support of the Action in an amount up to \$10,000, subject to Court approval.

1.32. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. MONETARY TERMS.

2.1. Gross Settlement Amount. Subject to all terms of this Agreement, BHG shall pay the Gross Settlement Amount in connection with this Settlement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring PAGA Members to submit any claim or form as a condition of payment. The Gross Settlement Amount is non-reversionary.

2.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court:

2.2.1. To Named Plaintiff: The Service Payment is in addition to any Individual Settlement Payment she may be entitled to receive as a PAGA Member. If the Court approves a Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Service Payment using IRS Form 1099. An award of less than the requested amount for the Service Payment will not give rise to a basis to abrogate the Settlement Agreement and the Court has authority under this Agreement to reduce (or increase) the Service Payment, at its discretion.

2.2.2. To Plaintiffs’ Counsel: Attorneys’ Fees and Litigation Costs to Plaintiffs’ Counsel. BHG will not oppose requests for these payments, provided the requests do not exceed these amounts. If the Court approves Attorneys’ Fees and/or Litigation Costs in an amount less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Attorneys’ Fees and Litigation Costs using one or more IRS 1099 Forms.

2.2.3. To the Administrator: Administration Expenses to the Administrator. To the extent the Administration Expenses are less or the Court approves payment less than the Administration Expenses set forth in this Agreement, the Administrator will retain the remainder in the Net Settlement Amount.

2.2.4. To the LWDA: Subject to Court approval, the PAGA Payment will be allocated to cover any and all claims for civil penalties associated with the Released Claims that were, or could have been, brought in the Actions under PAGA based on the factual allegations in the Operative Complaint and PAGA Notice; 75% of the PAGA Payment will be paid to the LWDA (i.e., the LWDA Payment) and the remaining 25% of the PAGA Payment (i.e., the Net PAGA Payment) will be distributed to PAGA Members as penalties in exchange for a full and final release of the PAGA claims. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

2.2.5. To Each PAGA Member/Tax Allocation: An Individual PAGA Payment calculated by: (a) dividing the Net Settlement Amount by the total number of PAGA Pay Periods worked by all PAGA Members during the PAGA Period; and (b) multiplying the result by each PAGA Members' PAGA Pay Periods. The Individual PAGA Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. PAGA Members assume full responsibility and liability for any individual taxes owed on their Individual PAGA Payment.

3. SETTLEMENT FUNDING AND PAYMENTS.

3.1. Delivery of Employee Data to Administrator. Not later than 15 days after the Court grants approval of the Settlement, BHG will simultaneously deliver the Employee Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect PAGA Members' privacy, the Administrator must maintain the Employee Data in confidence, use the Employee Data only for purposes of this Settlement, and restrict access to the Employee Data to Administrator employees who need access to the Employee Data to effect and perform under this Agreement. BHG has a continuing duty to immediately notify Plaintiffs' Counsel if it discovers that the Employee Data omitted PAGA Members' identifying information and to provide corrected or updated Employee Data as soon as reasonably feasible. Without any extension of the foregoing deadline the Parties and their counsel must expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Employee Data.

3.2. Funding of Gross Settlement Amount. BHG shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 21 days after the Effective Date.

3.3. Payments from the Gross Settlement Amount. Within 10 days after BHG funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, the Administration Expenses, the LWDA Payment, Attorneys' Fees, Litigation Costs, and Service Payment.

3.3.1. The Administrator will issue checks for the Individual Settlement Payments and send them to PAGA Members 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.

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3.3.2. The Administrator must conduct an Address Search for all other PAGA Members whose checks are returned undelivered without USPS forwarding addresses. Within 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 Address Search. The Administrator need not take further steps to deliver checks to PAGA Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any PAGA Member whose original check was lost or misplaced, requested by the PAGA Member prior to the void date.

3.3.3. For any PAGA Members whose Individual Settlement Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds, in the name of the PAGA Members, to the State of California's Unclaimed Property Division.

3.3.4. The payment of Individual Settlement Payments shall not obligate BHG to confer any additional benefits or make any additional payments to PAGA Members beyond those specified in this Agreement.

3.3.5. The Administrator will send checks for Individual PAGA Payments to all PAGA Members, who have no right to opt-out or otherwise exclude themselves from the settlement and release of PAGA claims set forth in this Settlement.

4. RELEASE OF CLAIMS.

Effective on the date when BHG fully funds the Gross Settlement Amount, the following release of claims will take effect: Plaintiff, all PAGA Members, and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims alleged in or which could have been asserted based on the same facts alleged in the Operative Complaint during the PAGA Period, including, without limitation for civil penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*) predicated on alleged violations of California Labor Code sections 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 227.3, 246-248.7, 256, 510, 512, 516, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and applicable provisions of the IWC Wage Order.

5. MOTION FOR SETTLEMENT APPROVAL.

5.1. PAGA Approval. Plaintiffs shall prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this PAGA Settlement under Labor Code § 2699(f)(2). To effectuate Approval and Judgment of the Settlement of PAGA claims, Plaintiff shall prepare either a Joint Stipulation Approving PAGA Settlement (subject to Defense Counsels' review and revision) or a Motion for Approval of PAGA Settlement. Plaintiff shall file declarations from Plaintiff's Counsel and the Named Plaintiff to support the Settlement.

5.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Settlement or forthcoming motions or joint stipulations for approval, Plaintiffs' Counsel and Defense Counsel will expeditiously work together in good faith on behalf of the Parties to resolve the disagreement. If the Court does not grant settlement approval or conditions any approval or review on any material change to this Agreement, Plaintiffs' Counsel and Defense Counsel will expeditiously work together in good faith on behalf of the Parties to modify the Agreement and

satisfy the Court's concerns. Should the Court decline to approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it.

6. SETTLEMENT ADMINISTRATION.

6.1. Selection of Administrator. The Parties have jointly selected the Administrator to administer this Settlement. The Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

6.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number to calculate payroll tax withholdings and report to state and federal tax authorities.

6.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under U.S. Treasury Regulation section 468B-1.

6.3.1. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Plaintiffs' Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, if applicable and if requested by either Party, the Administrator will prepare, and submit to Plaintiffs' Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement.

7. ESCALATION CLAUSE. Based on its records, BHG has provided a PAGA Pay Period Estimate. In the event the total PAGA Pay Periods set forth in the PAGA Pay Period Estimate is incorrect by more than 10%, the Parties agree that the Gross Settlement Amount shall be increased proportionately by the same percentage above 10%. For example, if the total PAGA Pay Periods is in fact 11% higher than the PAGA Pay Period Estimate, the Gross Settlement Amount will be increased by 1%.

8. EMPLOYEE ESTIMATE. Based on the records evaluated, there are an estimated 188 PAGA Members covered by this Agreement.

9. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

10. ADDITIONAL PROVISIONS.

10.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an

admission by the Parties that any of the allegations or the defenses in the Operative Complaint have merit or that there is any liability for any claims asserted or that any claims may proceed on a class, collective, or representative basis. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Covered Employee to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Plaintiffs' Counsel's ability to communicate with PAGA Members in accordance with Plaintiffs' Counsel's ethical obligations owed to PAGA Members.

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

10.4. Attorney Authorization. Plaintiffs' Counsel and Defense Counsel separately warrant and represent that they are authorized by the Parties, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.5. Cooperation. The Parties and their counsel will cooperate and use their best efforts, in good faith, to implement the Settlement by modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court, among other things.

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

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

10.8. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or Plaintiffs' Counsel and Defense Counsel, as their legal representatives.

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

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

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

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

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

10.14. Notice. All notices or other communications between the Parties required in connection with this Agreement shall be in writing and shall be deemed to have been duly given as of the 3rd business day after mailing by U.S. Mail or the same day if sent by email, addressed as follows:

To Plaintiffs:

Ferraro Vega Employment Lawyers, Inc.

Attn: Nicholas J. Ferraro

3333 Camino del Rio South, Suite 300

San Diego, CA 92108 USA

nick@ferrarovega.com / classactions@ferrarovega.com

www.ferrarovega.com

To BHG:

Higgs Fletcher Mack LLP

Attn: Edwin M. Boniske

401 West “A” Street, Suite 2600

San Diego, California 92101

boniske@higgslaw.com

10.15. Execution in Counterparts. This Agreement may be executed using physical and/or electronic signatures (i.e. DocuSign, SignRequest, Adobe Sign, etc.), which shall be accepted as originals for purposes of this Agreement. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

SIGNATURES

I have read this Agreement and agree to its terms.

Plaintiff Ashley Nunez Estrada

Date: 29 ago 2024

Ashley Núñez E.

Ashley Nunez Estrada

Defendant Baxter Hotel Group, Inc.

Date: _____

Name: _____

Title: _____

SIGNATURES

I have read this Agreement and agree to its terms.

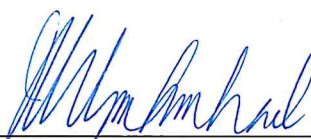
Plaintiff Ashley Nunez Estrada

Date: _____

Ashley Nunez Estrada

Defendant Baxter Hotel Group, Inc.

Date: August 22nd, 2024



Name: MICHAEL NGUYEN

Title: CFO