

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiff Jade McArthur (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), and Defendant Wyndham Vacation Ownership, Inc. (“Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Brent S. Buchsbaum of Law Offices of Buchsbaum & Haag, LLP (“Class Counsel”). Defendant is represented by Kathy A. Le, Kelli Dreger, and Lauren Shelby of Jackson Lewis P.C.

On April 17, 2023, Plaintiff sent a letter to the Labor & Workforce Development Agency (“LWDA”) indicating his intent to bring a claim for civil penalties pursuant to the Private Attorneys General Act, Labor Code section 2698, *et seq.* (“PAGA”) for various alleged wage and hour violations. On July 20, 2023, Plaintiff filed a representative PAGA action complaint against Defendant in Orange County Superior Court entitled *McArthur v. Wyndham Vacation Ownership, Inc., et al.*, Case No. 30-2023-01337693-CU-OE-CXC. On October 18, 2023, Plaintiff filed a First Amended Class Action Complaint alleging putative class claims and a PAGA claim, as follows: (1) unpaid overtime (California Labor Code section 510); (2) waiting time penalties (California Labor Code sections 201-203); (3) unpaid meal period premiums (California Labor Code sections 226.7 and 512(a)); (4) unpaid rest period premiums (California Labor Code section 226.7); (5) violation of California Business and Professions Code section 17200; and (6) violation of PAGA.

As stated below, to effectuate this Settlement, Plaintiff will be filing a Second Amended Class Action Complaint conforming the Action to the causes of action and theories alleged in the Action, and investigated and negotiated for settlement at mediation (i.e., to achieve the release of Released Claims and PAGA Released Claims defined below), and limiting the scope of the putative class to hourly or non-exempt California sales employees who worked for Defendant at any time from July 20, 2019, onward. The Second Amended Class Action Complaint will become the operative complaint and be referred to herein as the “Action.”

Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Action, and Defendant further denies that, for any purpose other than settling the Action, the Action is appropriate for class or representative treatment. With respect to Plaintiff’s claims, Defendant contends, among other things, that Plaintiff and the Settlement Class have been paid all wages and penalties due and owing to them, have been provided legally-compliant meal periods (or properly calculated meal break premium pay), have been provided legally-compliant paid rest periods (or properly calculated rest break premium pay), have been timely paid wages upon separation of employment, have been timely paid throughout employment, have been provided with accurate itemized wage statements, and have been reimbursed business expenses. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, and all other applicable laws. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code.

Given the uncertainty of litigation, and without Defendant making any admission as to the merits of any of the claims asserted, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Amended Complaint.** Prior to filing for preliminary approval of this Settlement, the Parties agree to stipulate to the filing of a Second Amended Class Action Complaint that will be mutually agreed upon by the parties, which will become the operative complaint and be referred to herein as the “Action,” as stated above. The amended complaint will conform the Action to the causes of action and theories investigated and negotiated for settlement at mediation.

2. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former hourly or non-exempt sales employees of Defendant in California who worked at any time from July 20, 2019, through June 30, 2024, or the date of preliminary approval, whichever is earlier (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under the California Code of Civil Procedure section 382. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

To the extent that any members of the Settlement Class participated in a prior class action settlement reached in *Pagh, et al. v. Wyndham Vacation Ownership, Inc.*, U.S.D.C. for the Central District of California, Lead Case No. 8:19-cv-00812-JVS-ADS (the “*Pagh/Forney* Settlement”), such members’ relevant review period in this Settlement begins on April 2, 2020.

3. **PAGA Aggrieved Employees.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate that the PAGA Aggrieved Employees shall be defined as:

All current and former hourly or non-exempt sales employees of Defendant in California who worked at any time from May 16, 2022, through June 30, 2024, or the date of preliminary approval, whichever is earlier (the “PAGA Period”).

4. **Release by the Settlement Class, PAGA Aggrieved Employees, and Plaintiff, and Effective Date of Settlement.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, members, employees, agents, principals, spouses, heirs, representatives, accountants, insurers, auditors, consultants, and Defendant’s successors, assigns and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively “Defendant’s Releasees”) as follows:

A. All members of the Settlement Class who do not opt-out will release and discharge Defendant and Defendant’s Releasees from all claims (with the exception of the PAGA Released Claims defined below), demands, rights, liabilities and causes of action arising from or related to the facts alleged in the operative complaint in the Action under any federal, state or local law or administrative order that were pled in the Action against Defendant or which arise out of or reasonably relate to such facts, whether known or unknown, including but not limited to the failure to pay

overtime compensation (Labor Code sections 510, 558, 1194, 1198), the failure to provide meal periods (Labor Code sections 226.7, 512, 558), the failure to pay meal period premium pay (Labor Code section 226.7), the failure to provide rest periods (Labor Code sections 226.7, 558), the failure to pay rest period premium pay (Labor Code section 226.7), the failure to pay all sick pay (Labor Code section 246), the failure to pay supplemental COVID-19 sick pay, the failure to timely pay wages throughout employment (Labor Code sections 204 and 558), the failure to timely pay final wages upon separation of employment (Labor Code sections 201-203), the failure to provide accurate itemized wage statements (Labor Code sections 226, 226.3), the failure to maintain accurate payroll records (Labor Code section 1174), unlawful collection of employee wages (Labor Code section 221), unlawful and unfair business practices, the failure to reimburse reasonable and necessary business expenses (Labor Code section 2802), and any other claims whatsoever that were alleged in the Action or which arise out of or reasonably relate to such facts, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code section 17200 *et seq.*, conversion, liquidated damages, punitive damages, interest, penalties, statutory penalties, PAGA civil penalties, and any other related claims and/or penalties of any nature (collectively, the “Released Claims”). The time period covered by this release is the Class Period.

- B. PAGA Aggrieved Employees, regardless of whether they opt-out of the Settlement, will release and discharge Defendant and Defendant’s Releasees from all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action against Defendant and/or Plaintiff’s letter to the LWDA dated on or about April 17, 2023, or which could have been pled in the operative complaint in the Action against Defendant based on the factual allegations therein that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release is the PAGA Period.
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff also agrees to release, as an individual and on behalf of his heirs, representatives, successors, assigns and attorneys and in addition to the released claims described in Paragraph 4.A. and 4.B., above, any and all claims of any nature whatsoever he has or may have for any acts occurring on or before the date of preliminary approval of the Settlement arising from his employment with Defendant, whether known or unknown, under federal law or state law against Defendant and Defendant’s Releasees. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, and that Plaintiff is, as a result, waiving all rights and benefits afforded by California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her

favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- D. The terms of settlement embodied in this Settlement along with all associated releases will become effective when all of the following events have occurred: (i) this Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been given to the Settlement Class, providing them with an opportunity to dispute information contained in the Notices of Settlement Payment, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement; (v) the later of the following events: sixty-five (65) calendar days following entry of the Court's final order approving the Settlement; or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) calendar days following entry of the Court's final order approving the Settlement, then when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief; and (vi) Defendant deposits the entire Maximum Settlement Amount with the Settlement Administrator ("Effective Date"). In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, there is no further recourse by an appellant or objector who seeks to contest the Settlement (this process will be referred to herein as "the Settlement becomes final"), and the Maximum Settlement Amount has been provided to the Settlement Administrator.

5. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a "Maximum Settlement Amount" or "MSA" of \$1,450,000.00 in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Class Action Administration Solutions as the "Settlement Administrator" to administer this Settlement.
- B. The Maximum Settlement Amount shall be paid by Defendant no later than thirty (30) calendar days after the Settlement becomes final.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$12,500.00, subject to Court approval;

- (3) Up to \$10,000.00 total for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and Plaintiff's service to the Settlement Class, subject to Court approval;
 - (4) Up to one-third (1/3) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$483,333.33), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$13,000.00, subject to Court approval; and
 - (5) \$45,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$33,750.00, will be payable to the LWDA, and the remaining 25%, or \$11,250.00, will be payable to the PAGA Aggrieved Employees as the "PAGA Amount," as described below.
- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class Members who do not opt-out.
- E. **Escalator Clause.** At the time of mediation, Defendant represented that there are an estimated 39,367 workweeks worked by the Settlement Class Members during the Class Period. If the number of actual total workweeks worked by Settlement Class Members during the Class Period, as reported to the Settlement Administrator following preliminary approval, exceeds this amount by more than 10% (i.e., if there are 43,304 or more total workweeks), Defendant will either: (1) pay an additional sum necessary to increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 15% increase in workweeks, Defendant would increase the Maximum Settlement Amount by 5%); or (2) elect to shorten the Class Period and PAGA Period (along with their associated releases) to a date that the total number of workweeks worked is at or under the 43,304 workweek threshold.
- Should this clause be triggered, Defendant will have five (5) business days (starting the day after receiving the preliminary calculations from the Settlement Administrator) to notify Class Counsel and the Settlement Administrator of Defendant's option. Should no option be selected by Defendant within this time period, the default option will be to increase the MSA on a proportional basis.
- F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes on any amounts designated as wages, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.

6. **Settlement Payments to the Settlement Class and PAGA Aggrieved Employees.** Settlement Class Members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Individual Settlement Payment based on the following formula:
 - i. First, the Settlement Administrator will distribute the PAGA Amount to PAGA Aggrieved Employees as PAGA civil penalties proportionally based on the number of pay periods each worked for Defendant in California during the PAGA period. All payments from the PAGA Amount will be allocated as 100% penalties.
 - ii. The remainder of the Net Settlement Amount will be distributed to participating Settlement Class Members based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period. (For Settlement Class Members who did not participate in the *Pagh/Forney* Settlement, the Settlement Administrator shall calculate their number of workweeks worked during the Class Period. For Settlement Class Members who participated in the *Pagh/Forney* Settlement, the Settlement Administrator shall calculate their number of workweeks worked during the period of April 2, 2020, through the end of the Class Period.) All payments from the Net Settlement Amount remainder will be allocated: 20% to wages and 80% to interest, all penalties and reimbursement of expenses. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations.
- C. Within ten (10) business days following the funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Individual Settlement Payment, and will prepare and mail Individual Settlement Payments to Settlement Class Members and PAGA Aggrieved Employees. At the same time, the Settlement Administrator will also distribute the amounts awarded to Class Counsel for attorneys' fees and costs, the amount awarded to Plaintiff for his Class Representative Enhancement Payment, the amount awarded to the LWDA for its share of PAGA civil penalties, and the amount awarded to the Settlement Administrator for its costs administering the Settlement.

- D. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties, interest and reimbursement of expenses). Payments made to PAGA Aggrieved Employees will be attributed 100% to penalties and paid via an IRS Form 1099. The Settlement Administrator will be responsible for issuing an IRS Form 1099 to PAGA Aggrieved Employees for such payments. Settlement Class Members will be responsible for all employee-side taxes due on Individual Settlement Payments.
- E. Defendant shall fully discharge its obligations to those Settlement Class Members to whom Defendant will pay a Settlement Amount through the mailing of a settlement check, regardless of whether such checks are actually received and/or negotiated by Settlement Class Members. Any check that is not negotiated within one hundred eighty (180) calendar days of mailing to a Settlement Class Member (the “check cashing deadline”) shall be distributed by the Settlement Administrator to the State Controller of California to be deposited in the California Unclaimed Property Fund, in the name(s) of the Settlement Class Member(s) whose check(s) were not cashed.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost, stolen, undelivered or misdelivered checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
- G. Settlement Payments Do Not Trigger Additional Benefits: All Settlement Payments to individual Settlement Class Members shall be deemed to be paid to such Settlement Class Member solely in the year in which such payments actually are received by the Settlement Class Member. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Settlement Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Settlement Class Members, and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

7. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$483,333.33. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$13,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work

performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

8. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of up to \$10,000.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

9. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Class Action Administration Solutions as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$12,500.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class Members in English only (as the Parties have met and conferred and believe the Notice Packet need not be translated here), for calculating Individual Settlement Payments, and for preparing all checks and mailings. The Settlement Administrator shall also maintain a website which posts all important documents, including the operative complaint, the PAGA notice letter to the LWDA, the Settlement Agreement (and any amendments), the Notice of Proposed Class Action Settlement, Request for Exclusion Form, and Change of Address Form, the orders granting preliminary and final approval, and the final judgment. The Final Judgment shall be posted on the Settlement Administrator's website for at least 180 days. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class Members.

10. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Brent S. Buchsbaum of Law Offices of Buchsbaum & Haag, LLP as Class Counsel;
- C. Appointing Plaintiff Jade McArthur as Class Representative for the Settlement Class;
- D. Approving Phoenix Class Action Administration Solutions as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Proposed Class Action Settlement, Request for Exclusion Form, and Change of Address Form), and which counsel for all Parties shall mutually agree upon before submitting to the Court, and directing the mailing of same; and

G. Scheduling a Final Approval hearing.

11. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) calendar days after the Court signs an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with a class database of the name, last known address, last known phone number, social security number, dates of employment, and relevant workweek information, for each Settlement Class Member and PAGA Aggrieved Employee during the Class Period and PAGA Period. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this class database confidential and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the Settlement.
- B. Within ten (10) business days from receipt of the class database, the Settlement Administrator shall: (i) run the names of all Settlement Class Members – once per Settlement Class Member – through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class Member; and (iv) mail a Notice Packet to each Settlement Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. The Settlement Administrator will also mail a follow-up post card to individuals who have not cashed their Individual Settlement Payments no later than sixty (60) calendar days prior to the check cashing deadline.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (as defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their estimated Individual Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.

- D. Requests for Exclusion. Except with respect to the settlement of the PAGA Released Claims, any Settlement Class Member who wishes to opt-out of the Settlement must complete and mail a written Request for Exclusion (defined below) to the Settlement Administrator, postmarked within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class Member; (2) contain a statement that the Settlement Class Member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class Member; (4) the Action's case name and number; and (5) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Notice of Proposed Class Action Settlement. If the Request for Exclusion does not contain the information listed in (1)-(4) and/or is not timely submitted, it will not be deemed valid for exclusion from the Settlement. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who submits a valid request to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any payment from the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement (except for terms related to the PAGA portion of the Settlement) or have any right to object, appeal or comment thereon.
 - ii. PAGA Aggrieved Employees may not opt-out of the release of PAGA Released Claims (as described in Paragraph 4.B.) and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the Settlement Class and do not receive a class portion of their Individual Settlement Payment.
 - iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class Member to appeal the final judgment.
- E. Objections. Settlement Class Members who do not opt-out may object to this Settlement Agreement as explained in the Notice of Proposed Class Action Settlement by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Any such written objections must contain the Settlement Class Member's name, address, and last four digits of his or her social security number and must state the legal and factual bases for objection. The objection must also be signed by the Settlement Class Member and reference the Action's case name and number. Defendant's counsel and Class Counsel shall file any responses to objections no later than the

deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class Member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing. Settlement Class Members need not submit written objections to be heard by the Court at the Final Approval Hearing.

- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. The Parties shall file with the Court any disputes submitted by Settlement Class Members, the evidence submitted in connection with the dispute, and the Settlement Administrator's initial decision regarding the dispute. The Court shall have the right to review any decision made by the Settlement Administrator regarding a dispute.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class Members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

12. **Final Approval.** Following preliminary approval and the Response Deadline, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment.

13. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation.

14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject

to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party through the date the motion for preliminary approval is filed. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Brent S. Buchsbaum of Law Offices of Buchsbaum & Haag, LLP
100 Oceangate, Suite 1200
Long Beach, CA 90802
brent@buchsbaumhaag.com

if to Defendant: Kathy A. Le of Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500, Irvine, CA 92618
kathy.le@jacksonlewis.com

17. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

18. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

19. **Enforcement Action.** The Orange County Superior Court shall maintain jurisdiction over this Settlement pursuant to California Code of Civil Procedure section 664.6. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. However, Settlement Class Members and PAGA Aggrieved Employees shall never be responsible for attorneys' fees and/or costs under this paragraph.

21. **Nullification and Termination.** This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; or (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorneys' fees and costs or granting of service fees or any other non-material term; or (c) the Court should for any

reason fail to enter the final judgment; or (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason. This paragraph limited to a final and binding ruling by the Court (with prejudice). The Parties agree to work together cooperatively to address and correct any issues with the Settlement that the Court may have prior to granting preliminary or final approval.

If 10% or more of the Settlement Class Members validly and timely request exclusion from this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's counsel must give Class Counsel and the Settlement Administrator written notice no later than ten (10) business days after the Settlement Administrator first informs Defendant that 10% or more of the Settlement Class Members have validly and timely opted out of the Settlement.

In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Plaintiff is prohibited from opting out of this Settlement.

Date:

Plaintiff Jade McArthur

Date:

Name: Marla Tichi
Title: Senior Vice President of Human Resources
(on behalf of Defendant Wyndham Vacation
Ownership, Inc.)

Date:

Kathy A. Le
Counsel for Defendant
(as counsel and not as a party)

Date:

Brent S. Buchsbaum
Counsel for Plaintiff
(as counsel and not as a party)