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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCESCO D'ONOFRIO, an individual, on behalf of himself and others similarly situated PLAINTIFF, v. NOBU MALIBU, LLC; and DOES 1 through 10, Inclusive, DEFENDANTS.	Case No. 24STCV27149 [Case Assigned for All Purposes to Hon. Elihu M. Berle, Dept. 6] **PAGA SETTLEMENT AGREEMENT** Complaint Filed: October 16, 2024 Trial: None Yet Set

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement" or "Settlement") is made by and between Plaintiff FRANCESCO D'ONOFRIO ("Plaintiff") and Defendant NOBU MALIBU, LLC ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

1. <u>DEFINITIONS</u>.

1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Defendant captioned *D'Onofrio v. Nobu Malibu, LLC*, Case No. 24STCV27149, initiated on October 16, 2024 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. "Administrator" means Simpluris, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4. "Aggrieved Employee" means a non-exempt or hourly employee of Defendant who worked in California during the PAGA period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendant's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. "Court" means the Superior Court of California, County of Los Angeles.

1.8. "Defense Counsel" means SOLTMAN & WATTLES LLP.

1.9. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment if no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on them; or (b) sixty-one (61) days after the date of entry of the settlement approval order if objections are filed and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

1.10. "Gross Settlement Amount" means $185,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment. In addition to Gross Settlement Amount Defendant will pay $10,000 to Plaintiff in lieu of arbitrating Plaintiff's individual claims and in consideration for representing Aggrieved Employees and for general release of all Plaintiff's claims beyond PAGA claims released in this action in accordance with a separate individual settlement and release agreement entered between the Parties.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (m).

1.14. "LWDA PAGA Payment" means the 65% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (m).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means THE SENTINEL FIRM, APC.

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

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from October 16, 2023 through January 22, 2025.

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

1.21. "PAGA Notice" means Plaintiff's October 16, 2024 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), attached to this Agreement as **Exhibit A.**

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees and the 65% to LWDA in settlement of PAGA claims.

1.23. "Plaintiff" means FRANCESCO D'ONOFRIO, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means: Defendant, and all their past, present and/or future, direct and/or indirect, officers, directors, members, managers, owners, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, sectors, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

1.27. "Defendant" means named Defendant NOBU MALIBU, LLC.

2. <u>RECITALS</u>.

2.1. On October 16, 2024, Plaintiff commenced this Action by filing a class action complaint ("Complaint") alleging eight causes of action against Defendant for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.). On the same day, Plaintiff submitted his PAGA letter with the LWDA and provided notice to Defendant.

2.2. On or around November 20, 2024, the Court granted the Parties' stipulation that included the following terms: (1) The Parties agree to participate in private mediation in an effort to resolve Plaintiff's individual claims and Plaintiff's anticipated PAGA representative claims; (2) If the Parties are unable to reach a settlement through private mediation, Plaintiff shall submit his individual claims to arbitration before JAMS within thirty (30) days of the mediation; (3) The Parties agree that all class allegations shall be dismissed without prejudice against Defendant; (4) This action shall be stayed pending the outcome of the arbitration of Plaintiff's individual claims, and all dates currently on calendar shall be vacated; and (5) A Status Conference regarding the Status of Arbitration will be set for February 28, 2025, or the next available date thereafter.

2.3. On December 23, 2024, Plaintiff filed his First Amended Complaint which added a cause of action for civil penalties pursuant to the PAGA based on the same Labor Code violations alleged in the Complaint (the "Operative Complaint")[1].

[1] On January 14, 2025, Plaintiff filed an Application to Dismiss Class Claims Without Prejudice and accompanying Declaration of Tiffany Hyun pursuant to Rules of Court, Rule 3.770 that is currently pending.

2.4. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. In advance of arbitrating Plaintiff's individual claims and litigating PAGA representative claims, the Parties agreed to attend private mediation to resolve Plaintiff's individual claims and PAGA claims.

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

2.6. On January 22, 2024, the Parties participated in an all-day mediation presided over by mediator Steve Pearl, Esq., which led to this Agreement to settle the Action.

2.7. Prior to mediation, Plaintiff obtained, through informal discovery, employee and payroll data, policy documents, and additional information regarding Defendant's non-exempt, hourly employees in California, which Plaintiff's Counsel reviewed and analyzed.

2.8. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 1.10 and 8, Defendant promises to pay One Hundred Eighty-Five Thousand Dollars ($185,000.00) and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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 1/3% which is currently estimated to be $61,050.00 and PAGA Counsel Litigation Expenses

Payment of not more than $20,000. Defendant 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 a motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment with the motion for approval of the Settlement. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. 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 Litigation 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 Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, 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 $3,500.00 except for showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $3,500.00, the Administrator will retain the remainder in the Net Settlement Amount. Simpluris has been selected as the Administrator, based upon its "not to exceed" bid of $3,500.00.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties to be paid from the Gross Settlement Amount, with 65% allocated to the LWDA PAGA Payment and 35% allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records, Defendant estimates there are 318 Aggrieved Employees who worked a total of **6,581** PAGA Pay Periods from October 16, 2023 through January 22, 2025.

4.2. Aggrieved Employee Data. Within fourteen (14) days after the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Expenses Payment. Disbursement of the

PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. 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 along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). The face of each check shall prominently state the date (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 retuned undelivered without USPS forwarding address. 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 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.

4.4.3. For any Aggrieved Employee whose 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.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant 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 Defendant fully funds the entire Gross Settlement Amount and Plaintiff's general release payment pursuant to the separate agreement entered between the Parties, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release.

5.1.1 Scope of Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Pursuant to the individual settlement and release agreement, Plaintiff also provides a general release of all claims as defined in a separate individual settlement and release agreement. Plaintiff's Release does not does apply to: (i) claims or actions to enforce the PAGA Settlement Agreement; (ii) claims premised upon vested rights Plaintiff may have under Defendant's ERISA-covered employee benefit plans; and (iii) claims that controlling law clearly states may not be released by private settlement, such as claims for unemployment benefits, state-sponsored disability benefits, social security benefits, or workers' compensation benefits. With the exception of Plaintiff, who will execute an individual settlement agreement which includes a general release of all claims, this settlement shall not impact Aggrieved Employees' ability to assert claims other than the PAGA claims being released by this Settlement.

5.1.2 Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

> **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.**

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties Plaintiff and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the Operative Complaint or the PAGA Notice submitted in connection with the Action, including failure pay all wages and hours worked, failure to provide meal periods, failure to provide rest breaks, failure to provide accurate itemized wage statements, failure to maintain accurate records, waiting time penalties, failure to reimburse necessary business expenditures, and failure to timely pay wages (i.e., Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802) (the "Released Claims"). This release is limited to claims arising during the PAGA Period.

5.3 Release by PAGA Counsel: PAGA Counsel releases on behalf of their present and former attorneys, employees, agents, successors and assigns, the Released Parties from all claims for PAGA Counsel Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

Plaintiff agrees to file a motion for approval of this Settlement.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (s)(1)), this Agreement (Labor Code section 2699, subd. (s)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the motion for approval of this Settlement no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Simpluris to serve as the Administrator and verified that, as a condition of appointment, Simpluris 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.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

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

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

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of January 22, 2025, there are 318 Aggrieved Employees who worked 6,581 Pay Periods from October 16, 2023 through January 22, 2025. The settlement as negotiated contemplates a PAGA Pay Period count through January 22, 2025. If the number of actual PAGA pay periods during the PAGA Period exceeds 10% of the estimated pay periods (i.e., exceeds 7,239 pay periods), Defendant shall either (1) increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of pay periods in excess of 7,239 pay periods, or (2) cut off the release period as of the date the 10% cushion is exhausted. For example, if there is a 1% increase over 10% then the GSA increases by 1%.

9. CONTINUING JURISDICTION OF THE COURT.

9.1 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.2. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1. No Admission of Liability 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and 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. 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.

10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, 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.

10.4. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5. 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.

10.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant 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.

10.7. 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 their representatives, and approved by the Court.

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

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

10.10. 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.

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

10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13. 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.

10.14. 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.

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

To Plaintiff:
Seung Yang
seung.yang@thesentinelfirm.com
Tiffany Hyun
tiffany.hyun@thesentinelfirm.com
THE SENTINEL FIRM, APC
355 S. Grand Ave., Suite 1450
Los Angeles, California 90071
Telephone: (213) 985-1150
Facsimile: (213) 985-2155

To Defendants:
SOLTMAN & WATTLES LLP
KEVIN S. WATTLES

kwattles@slfesq.com
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90 E. Thousand Oaks Blvd., Suite 300
Thousand Oaks, CA 91360
Tel: (805) 497-7706
Fax: (805) 497-1147

10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

The Parties hereby execute this Agreement.

Dated: 03 / 24 / 2025

Plaintiff FRANCESCO D'ONOFRIO

Francesco D'Onofrio
By:______________________________

FRANCESCO D'ONOFRIO

Dated: 3/17/2025

Defendant NOBU MALIBU, LLC

DocuSigned by:
By: CHRISTINE LONGFIELD
7D4FE26DEF6046A...
Christine Longfield
Its Chief Financial Officer

Dated: March 21, 2025

THE SENTINEL FIRM, APC

By:____________________________________

Seung L. Yang
Tiffany Hyun
Attorneys for Plaintiff
FRANCESCO D'ONOFRIO

Dated:

SOLTMAN & WATTLES LLP

By:____________________________________

Kevin S. Wattles
Rachael L. Mark
Attorneys for Defendant
NOBU MALIBU, LLC

APPROVED AS TO FORM AND CONTENT.

Dated: **THE SENTINEL FIRM, APC**

By:______________________________
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