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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA SANDOVAL NUNEZ, an individual,
on behalf of herself and others similarly
situated,

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case Assigned for All Purposes to Hon.
Maren Nelson in Dept. 17]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: March 18, 2021

Time: 9:30 a.m.

Dept.: 17

Complaint Filed: February 25, 2020

FAC Filed: May 4, 2020

SAC Filed: February 11, 2021

Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. Defendant MERRITT HOSPITALITY, LLC operates fifteen (15) first-class hotels and has roughly four thousand (4,000) statewide employees in California.

5. Plaintiff was hired as an hourly non-exempt “Front Desk Agent” for Defendant in California at its Warner Center location from approximately October 2018 through February 2020. Plaintiff’s job duties included general administrative and clerical tasks. Plaintiff earned roughly \$16.63 per hour. Plaintiff has agreed to limit this action to the hotel location where she worked in Woodland Hills, California.

6. On February 25, 2020, Plaintiff filed a Class Action Complaint and a notice with California’s Labor and Workforce Development Agency (“LWDA”), mailed February 24, 2020, regarding her intent to file an action seeking civil penalties under PAGA. Plaintiff alleges that throughout Plaintiff and the Proposed Class’ employment with Defendant, Defendant failed to: pay all wages; provide lawful meal and rest periods; issue accurate itemized wage statements; and failed to pay all wages due upon termination. Plaintiff has also asserted a representative claim

1 under PAGA for Defendant's failure to provide a suitable seating accommodation.

2 7. On May 4, 2020, Plaintiff filed a First Amended Complaint ("FAC"), adding the
3 PAGA claim based on the facts previously alleged in the Complaint.

4 8. In the operative Complaint, Plaintiff alleges seven causes of action for: (1) Failure
5 to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide
6 Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Failure to Provide Rest Breaks
7 Pursuant to Labor Code § 226.7; (4) Failure to provide accurate, itemized wage statements; (5)
8 Waiting time penalties Pursuant to Labor Code § 203; (6) Violation of Business & Professions
9 Code § 17200; and (7) Penalties Pursuant to Labor Code § 2699, et seq.

10 **THE DISCOVERY PROCESS AND MEDIATION**

11 9. After the matter was at issue, the Parties began to engage in informal discovery to
12 understand the nature of the allegations and the scope of potential liability. Defendant provided
13 Plaintiff's counsel with pertinent data for the Class Members so that the Parties could fully-
14 investigate the claims at issue and understand their strengths and weaknesses. This data included
15 Proposed Class data, Plaintiff's payroll data, and Defendant's internal policies.

16 10. The Parties agreed to mediate with experienced mediator, Jeff Krivis, and to an
17 informal exchange of documents and information related to the putative class.

18 11. Defendant produced a sampling of records and class data, including the timecards,
19 pay records, and written policies related to putative class members.

20 12. On November 23, 2020, the Parties attended a full-day mediation with experienced
21 mediator Hon. Jeffrey Krivis. Though the matter did not settle that day, the Parties continued to
22 work with the mediator and ultimately accepted the mediator's settlement proposal to settle
23 Plaintiff's claims on a class-wide basis in December 2020.

24 13. Based on their own independent investigation and evaluation, Class Counsel is of
25 the opinion that the Settlement Agreement with Defendant is fair, reasonable, and adequate, and
26 in the best interest of the settlement classes in light of all known facts and circumstances, including
27 the risk of significant delay, defenses asserted by Defendant, Defendant's inability to pay,
28 uncertainties regarding a class and representative action trial on the merits, and numerous potential

1 appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Settlement
2 Agreement solely to avoid the cost of litigation. Accordingly, the Parties and their counsel desire
3 to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from
4 or relating to the Action on the terms set forth here.

5 **CERTIFICATION FOR SETTLEMENT PURPOSES**

6 14. Plaintiff's allegations present common legal and factual questions of, *inter alia*,
7 whether Defendant applied the same policies to all class members; whether these policies resulted
8 in Labor Code violations; whether Defendant's conduct was intentional; and whether class
9 members are entitled to penalties.

10 15. These questions could be resolved using Defendant's time and payroll records and
11 written policies and practices.

12 16. Plaintiff maintains that the proposed Settlement Class is ascertainable for several
13 reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the
14 Settlement Administrator containing the full name, last known address, last known home telephone
15 number, social security number, and dates of employment for all putative class members after
16 issuance of the preliminary approval order.

17 17. Settlement Class member consists of Defendant's hourly employees, and
18 Defendant is required to keep records of its hourly employees' names, home addresses, and social
19 security numbers.

20 18. Defendant informally produced Plaintiff's personnel file and pay statements,
21 relevant commission policies, sampling shift data, pay data, and wage statements for Settlement
22 Class Members containing class member contact information, which confirms that all Settlement
23 Class member may be readily identified based on Defendant's records.

24 19. Plaintiff is confident she will be able to establish that the proposed Settlement Class
25 is ascertainable and sufficiently numerous.

26 20. Plaintiff argues that there are questions of law and fact common to the proposed
27 Settlement Class that predominate over any questions affecting only individual Class Members.

28 21. These common questions include: (1) whether Defendant failed to pay all wages

and/or overtime compensation; (2) whether Defendant failed to provide lawfully required meal periods and/or failed to compensate employees one (1) hour's wages in lieu thereof; (3) whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour's wages in lieu thereof; (4) whether Defendant failed to provide accurate itemized wage statements; (5) whether Defendant failed to pay compensation due and owing upon termination of employment; (6) whether Defendant engaged in unfair competition; and, (7) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged including the alleged failure to provide suitable seating.

22. Defendant maintained a company handbook containing uniform meal and rest break policies for all hourly employees.

23. Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment.

24. Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members were not paid all wages/overtime; (2) Settlement Class Members did not receive their meal and rest periods as required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4) Settlement Class Members were not paid all wages owed upon termination/resignation; and (5) Defendant failed to provide suitable seating.

25. For purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common meal and rest policies and wage policies applied to the proposed Settlement Class Members and certification for settlement purposes is appropriate.

26. Plaintiff worked as a "Front Desk Agent" for Defendant at its Warner Center location, earning roughly \$16.63 per hour.

27. Plaintiff alleges that she: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal/rest periods as required by law; (3) worked without being provided accurate itemized wage statements; and (4) worked without being paid all wages due upon separation. She also alleges that she experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. based on the previously alleged

1 Labor Code violations and for Defendant's failure to provide suitable seating.

2 28. Plaintiff also contends that her claims are typical of those of the Settlement Class.

3 29. Plaintiffs seek relief for these claims and derivative claims on behalf of all class
4 members.

5 30. Plaintiff believes that she is capable of fairly representing and adequately protecting
6 the interests of the proposed Settlement Class Members.

7 31. The members of the proposed Settlement Class all worked for Defendant during
8 the relevant time period and incurred the same type of alleged damages with regard to Defendant's
9 alleged violations of the law.

10 32. Plaintiff has already demonstrated her ability to advocate for the interests of the
11 class by initiating this litigation, gathering documents and information, and obtaining a fair
12 settlement on behalf of class members.

13 33. Moreover, Plaintiff has agreed to serve as Class Representative and has retained
14 qualified Counsel who is experienced in prosecuting wage and hour class actions.

15 34. This demonstrates her commitment to bringing about the best possible results for
16 the benefit of the proposed Settlement Class.

17 35. Plaintiff has provided her Counsel with all necessary and pertinent information.

18 36. She has been a very active participant in the litigation including having frequent
19 contact with Settlement Class Members and working closely with Class Counsel to develop the
20 theories of liability.

21 37. Plaintiff has provided her Counsel with all necessary and pertinent information to
22 evaluate the case.

23 38. Plaintiff believes that she has and will continue to adequately represent the
24 proposed Settlement Class Members.

25 39. In this regard, the superiority of class treatment is evident here because individual
26 pursuit of class members' claims may not be economically viable.

27 40. The only alternative to certification would be to force over 261 employees to join
28 this action, file individual, uniform actions, or abandon their legal rights altogether.

1 41. Plaintiff maintains that this economic reality would result in a windfall for
2 Defendant if this case were not certified.

3 **THE PROPOSED SETTLEMENT**

4 42. For purposes of Settlement Agreement, the settlement class is defined as: “all
5 persons employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during
6 the Class Period.” (“Settlement Class Members” or “Class Members”)

7 43. The Class Period is February 25, 2016, up to January 22, 2021.

8 44. As of November 23, 2020 (the date of mediation) and based on documents and
9 other information produced by Defendant, there are approximately 261 Settlement Class Members.

10 45. As detailed fully in the Settlement Agreement, the Settlement provides for
11 Defendant to pay a Gross Settlement Fund of \$190,000.00, which includes the sum of the
12 Individual Settlement Payments, the Class Representative Enhancement Award, the Class Counsel
13 Award, PAGA Payment, and the Settlement Administration Costs.

14 46. The Net Settlement Fund is the Gross Settlement Fund, less Class Counsel Award,
15 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.

16 **KULLAR ANALYSIS**

17 47. This discovery permitted Class Counsel to fairly evaluate the strength of the case
18 and the risks associated with ongoing litigation.

19 48. Class Counsel is experienced in handling wage and hour class actions and, after
20 weighing all of the following factors, supports this Settlement Agreement.

21 49. Plaintiff contends that Defendant failed to properly compensate Plaintiff for all
22 work in excess of eight (8) hours in a workday and/or forty (40) hours at the rate of one-half (1 ½)
23 their regular rate of pay. Plaintiff alleges that she and the Settlement Class were forced to work
24 on a regular and consistent basis without receiving compensation for all hours worked at the proper
25 rate.

26 50. Plaintiff alleges the way that Defendant calculated overtime it was slightly
27 underpaying Settlement Class Members, thus resulting in a failure to compensate Plaintiff and
28 similarly situated employees for all overtime hours worked at the correct overtime rate.

1 51. Plaintiff alleges that the underpayment was slight with the overtime rate being off
2 by a few cents.

3 52. Defendant strongly disputes this contention and argues that all overtime worked
4 was paid at the correct rate.

5 53. While Plaintiff is confident that certification of the wage and overtime class is
6 appropriate, at the same time, it cannot be ignored that there are significant risks associated with
7 moving forward and attempting to certify the wage and overtime claim.

8 54. Plaintiff acknowledges that did Defendant did pay overtime pay and the potential
9 dispute is limited to whether the rate is correct or not.

10 55. While Plaintiff alleged that the overtime rate was paid at a rate that was a few cents
11 off resulting in an alleged cumulative underpayment of approximately \$31,686.87 to the Proposed
12 Class, Defendant walked Plaintiff through it overtime calculations as part of the negotiating
13 process in an effort to establish that it was paying at the correct overtime rate.

14 56. In the end, though the Court may find that Plaintiff's wage and overtime claim is
15 certifiable, the monetary damages are small because Plaintiff acknowledges that alleged
16 underpayment was quite small.

17 57. If litigation continued, it is anticipated extensive discovery would be necessary to
18 support Plaintiff's contention, including through further written discovery and depositions of
19 Defendant's person(s) most knowledgeable. As such, Plaintiff could not attribute full value to this
20 claim in the negotiations.

21 58. Plaintiff alleges that that her managers frequently told her that she could not take a
22 meal break during shifts, and Plaintiff contends that she was frequently refused a meal break.

23 59. In addition, Plaintiff's managers routinely instructed her to clock-out for meal
24 breaks on the premise that another employee would cover her position.

25 60. Often, however, the other employee never showed up and despite being "clocked
26 out" Plaintiff was not able to take her meal break.

27 61. While Plaintiff is confident that certification of the meal period class is appropriate,
28 at the same time, it cannot be ignored that there are significant risks associated with moving

1 forward and attempting to certify the meal period claim.

2 62. Plaintiff must acknowledge that the Court might find that Defendant did in fact
3 maintain an accurate written meal period policy.

4 63. In addition, there was risk that at certification (and trial), Defendant would
5 introduce evidence that employees were regularly advised of the timing of meal periods.

6 64. With this analysis in mind, there is significant risk that the Court could have
7 determined that the written meal period policy does comply with California law, and in that
8 scenario, the likelihood that Plaintiff would have been able to certify a meal period class was very
9 low.

10 65. As Plaintiff's analysis of the data above may suggest, the extent to which Defendant
11 actually "provided" employees with lawful breaks according to its policy would be highly disputed
12 were the case to have continued, a considerable discount from the maximum settlement value of
13 this claim was required.

14 66. As for the damage analysis, Plaintiff's Counsel conducted an analysis of the sample
15 of wage statements at issue and determined the meal period violation rate. This analysis revealed
16 that, of the sample payroll documents provided by Defendant prior to mediation, the records show
17 that, for shifts of greater than five (5) hours, Plaintiff and other employees missed their meal
18 periods approximately 4.5% of the time and took late meal periods 2.7% of time.

19 67. Using these violations rates, Plaintiff's Counsel assessed the maximum potential
20 liability on the meal period claim to be \$43,432.27.

21 68. Plaintiff must acknowledge Defendant's contention that Defendant maintained a
22 valid written meal break policy and that any missed or late meal periods were waived by the
23 employees. Accordingly, a considerable discount from the maximum settlement value of this
24 claim is appropriate.

25 69. Just as with meal periods, Plaintiff alleges that was regularly and consistently told
26 by managers that she could not take rest breaks.

27 70. Defendant maintains that its policy makes rest breaks available and that no violation
28 has been committed.

1 71. Accordingly, while Plaintiff believes that certification of the rest period class is
2 appropriate as a result of Defendant's common policies, at the same time, it cannot be ignored that
3 there are significant risks associated with moving forward and attempting to certify the rest period
4 claim.

5 72. Plaintiff must acknowledge that the Court might find that Defendant did in fact
6 maintain an accurate written rest period policy that does comply with California law, and in that
7 scenario, the likelihood that Plaintiff would have been able to certify a rest period class was very
8 low.

9 73. As Plaintiff's analysis of the data above may suggest, the extent to which Defendant
10 actually "provided" employees with lawful rest according to its policy would be highly disputed
11 were the case to have continued, a considerable discount from the maximum settlement value of
12 this claim was required.

13 74. Defendant would certainly have relied upon its written rest period policy and
14 argued that any alleged violations Plaintiff asserted were unique to her and you would have to ask
15 each person whether or not they were able to take complaint rest periods per day, thereby defeating
16 commonality.

17 75. The reliance on Plaintiff's experiences and further need for supportive testimony
18 through depositions and declarations (which will assuredly to be countered with Defendants' own
19 testimony) makes the value of this claim uncertain.

20 76. As a result, Plaintiff did not give significant value to the meal period claim.

21 77. Unlike the meal period claim, there was no time data to analyze to determine the
22 rest period violation rate. Instead, Plaintiff maintained that each and every fractional shift triggered
23 a rest period violation. Per this conclusion, Plaintiff's Counsel assessed the maximum potential
24 liability on the rest period claim to be \$716,222.43 (\$17.13 average hourly rate x 41,811 eligible
25 shifts). However, for the reasons stated, Plaintiff's counsel believes that significant discount of
26 this claim is appropriate.

27 78. Plaintiff's counsel has calculated the maximum value of the wage statement claim
28 under Labor Code section 226(a) to be \$65,550.00.

1 79. Plaintiff alleged that Defendant failed to accurately show Plaintiff's and the
2 Proposed Class' overtime rates on the wage statements it issued.

3 80. By way of example, attached as Exhibit "2" is document Bates Stamped Maria
4 Nunez 0034.

5 81. This paystub reflects Plaintiff's hourly rate of \$16.63 per hour.

6 82. Plaintiff's accurate overtime rate was \$24.95 (\$16.63 x 1.5)

7 83. On Plaintiff's paystub, there are two overtime categories which show overtime rates
8 of \$24.85 and \$25.00.

9 84. Plaintiff alleges that Defendant has violated Labor Code § 226(a) and the IWC
10 Wage Order as a matter of law and is liable.

11 85. While Plaintiff is confident that certification of the inaccurate wage statement claim
12 is appropriate, Plaintiff must nevertheless acknowledge that there are significant risks associated
13 with moving forward and attempting to certify the inaccurate wage statement claim.

14 86. Plaintiff anticipated that Defendant would argue that the itemized wage statements
15 issued were "accurate" because they do show what the Class Members were actually paid.

16 87. Defendant would argue that, like *Maldonado*, simply because Plaintiff asserted a
17 failure to pay wages claim, that would not automatically result in penalties for inaccurate wage
18 statements so long as the wage statements show "the pay received" by the Class Members.

19 88. Because of this argument, Plaintiff believes that a significant discount is
20 appropriate.

21 89. Plaintiff contends that Defendant failed to properly pay overtime for any work in
22 excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week.

23 90. The risk analysis for the section 203 claim flows from the risk analysis for the
24 underlying wage claim discussed above.

25 91. If Defendant could prove, as it contends, that class members were properly paid for
26 all hours worked, there would be no recovery of wages and no waiting time penalties that flow
27 therefrom.

28 92. Plaintiff also alleged that Defendant owes waiting time penalties by not paying

1 former alleged employees all wages owed and all premium payments for non-compliant meal or
2 rest periods. Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002)
3 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute “wages” under
4 Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and legislative
5 history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional
6 hour of pay’ is a premium wage, not a penalty”).

7 93. Though *Naranjo* is no longer citable as the California Supreme Court accepted
8 review in late December 2019, this issue is still certainly undecided.

9 94. Further, to establish liability for waiting time penalties, Plaintiff would have to
10 establish not only that the underlying violations occurred, but also that Defendant’s conduct was
11 “willful.” Labor Code § 203.

12 95. Regarding the claim for failure to provide suitable seating, Defendant contends that
13 it fully satisfied its obligation to provide suitable seating to its employees.

14 96. Defendant contends that during lulls in guest activity, Defendant provides Front
15 Desk Agents with chairs located directly behind the Front Desk. Furthermore, Defendant provided
16 photographic evidence of this alleged seating arrangement. As such, Plaintiff believes that a
17 significant discount of this claim is appropriate for settlement purposes and the Settlement
18 Agreement’s contemplated PAGA payment of \$10,000.00 is appropriate.

19 97. It can be ignored that Defendant’s financial status also poses a risk to recovery by
20 the Proposed Class. (Szamet Decl. ¶97.) Defendant is a hotel in Southern California that has been
21 hugely impacted by the state stay at home orders including travel restrictions. (Id.) Indeed, for
22 many months over the past year Defendant has been closed altogether or under very restrictive
23 occupancy requirements. (Id.) Defendant’s financial status was raised at mediation and Plaintiff
24 certainly had to consider Defendant’s ability to withstand a sizeable judgment against it. (Id.)
25 These risks were carefully considered in the negotiating process and further support Plaintiff’s
26 belief that the settlement is fair, adequate, and reasonable.

27 98. There is significant expense associated with the class certification process, which
28 the Parties can avoid by entering into the contemplated Settlement Agreement now.

1 99. If the Court did eventually certify a class, trial of a case involving approximately
2 261 Settlement Class Members would require the retention of expensive expert witnesses, the
3 accrual of extensive litigation costs, and a significant time overlay by the parties.

4 100. Moreover, given the complexity and unsettled nature of the issues in this case it is
5 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal
6 would result in further delay for the Settlement Class Members who are waiting for a resolution in
7 this matter.

8 101. This case has not been certified to be tried as a class action. While Plaintiff believes
9 there is strong evidence to support certification of several possible subclasses, certification is
10 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is
11 always a possibility. In attempting to certify a class, the parties would need to conduct multiple
12 depositions, including of the Class Representative and of several person(s) most knowledgeable
13 regarding Defendant's meal and rest policies. There is a risk for both sides as to what these
14 depositions will reveal and whether they will support class certification to the extent expected.

15 102. It was very difficult for the Parties to reach this Settlement of \$190,000.00.

16 103. This Settlement is the result of adversarial, non-collusive, and arms-length
17 negotiations aided by experienced mediator, Jeffrey Krivis. The Parties arrived at it after extensive
18 investigation and discovery, careful evaluation of the law, risks, and all information substantiating
19 the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find
20 Defendant liable.

21 104. Working with a data expert, Plaintiff was able to analyze Defendant's maximum
22 potential exposure on the operative claims alleged.

23 105. As discussed above, Plaintiff assessed full value of the Wage/Overtime claim,
24 without any discount, at approximately \$31,686.87.

25 106. The full value of the Meal Period claim, without any discount, was approximately
26 \$43,432.27.

27 107. Plaintiff assessed the full value of the Rest Period claim, without any discount, was
28 approximately \$716,222.43.

1 108. For the reasons above, Plaintiff determined that accepting a steep discount of these
2 full amount was appropriate.

3 109. Using \$50/\$100 per wage statement with a cap of \$4,000 per employee, Plaintiff
4 valued the Wage Statement Claim, without discount, at \$65,550.00.

5 110. Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo*
6 and *Maldonado*, Plaintiff determined that a discount of this claim was fair for settlement purposes.

7 111. Plaintiff valued the Waiting Time Penalty Claim, without discount, at \$34,427.51.

8 112. Due to the risk discussed above that 226(a) liability wouldn't attach under *Naranjo*
9 and *Maldonado*, Plaintiff determined that a discount of this claim was fair for settlement purposes.

10 113. Finally, using \$100/\$200 per pay period, Plaintiff calculated the value of the PAGA
11 claim at \$131,100.00 for Settlement Class Members.

12 114. The main risk taken into account with PAGA is the discretionary nature of the
13 penalty award.

14 115. A judge can award the statutory maximum of \$100 for the initial violation and \$200
15 thereafter or – in theory – one cent per wage statement.

16 116. While there is a dearth of available authority, in Plaintiff's view, were she to
17 succeed on any of the underlying Labor Code violations, it is certainly speculative that a Judge
18 would also award large penalties on top of any damages recovered on the underlying claims.

19 117. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
20 Settlement Class Members' claims was approximately \$1,022,043.68 (\$31,686.87 + \$43,432.27 +
21 \$716,222.43 + \$65,550.00 + \$34,427.51 + \$131,100.00).

22 118. However, as a result of the forgoing risks on the merits and the attendant discounts
23 taken for purposes of negotiating, Class Counsel believes the Gross Settlement Fund of
24 \$190,000.00 is fair and reasonable.

25 **ATTORNEY COMPETENCE**

26 119. Kingsley & Kingsley is experienced in prosecuting employment litigation, and
27 since 2000 we have focused our practice on wage, hour, and working condition violations. My
28 firm is well versed in class action litigation and has diligently and aggressively pursued this action.

1 Kingsley & Kingsley currently serves as class counsel for several dozens of pending class action
2 lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court.

3 Below is a small, but representative sampling of wage and hour cases handled by my firm:

- 4 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
5 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
6 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 7 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
8 December 2005, Honorable Rita Miller granted final approval of Settlement in the
9 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 10 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
11 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
12 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 13 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
14 2008, the Honorable Mary Thornton House granted final approval of Settlement in
15 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
16 33 1/3%.
- 17 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
18 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
19 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
20 33.3%.
- 21 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
22 March 2012, the Honorable James P. Kleinberg granted final approval of
23 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
24 fees request of 33.3%.
- 25 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
26 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
27 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
28 court granted attorneys' fees request of 38%.

- 1 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
2 2014, the Honorable William F. Highberger granted final approval of Settlement in
3 the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of
4 33.33%.
- 5 i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-
6 00705 AWIJLT). This certified class action was approved for final settlement by
7 the Honorable Anthony W. Ishii in October 2015, in the gross amount of
8 \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.
- 9 j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super.
10 Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement
11 in the gross amount of \$995,000.00, and the court granted attorney's fees request
12 of 33.33%.
- 13 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
14 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
15 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
16 fees.
- 17 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
18 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
19 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
20 33.33%.
- 21 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was
22 proposed for final settlement by the Honorable Richard L. Fruin on February 19,
23 2016, in the gross amount of \$5,250,000.
- 24 n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).
25 The matter was approved for final settlement by the Honorable Lee Smally Edmund
26 in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of
27 38%.
- 28 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for

1 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
2 matter was approved for final settlement by the Honorable Anthony W. Ishii in
3 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
4 attorney’s fees benchmark award of \$1,525,000.

- 5 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
6 15-101333). The matter was approved for final settlement before the Hon. Stephen
7 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
8 attorneys’ fees request of 33.33%.

9 120. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000
10 and since that time has been appointed class counsel on dozens of wage and hour class actions that
11 have been approved for class certification. Since 2011, Kingsley & Kingsley, APC has moved for
12 class certification in 15 matters and has successfully obtained class certification in 16 of those
13 cases. A brief sampling of which includes:

- 14 a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927),*
15 *approved for Class Certification in 2011.*
- 16 b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
17 December 19, 2012) (court granted contested class certification and appointed
18 Kingsley & Kingsley as class counsel).
- 19 c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
20 filed February 3, 2014) (court granted contested class certification and appointed
21 Kingsley & Kingsley as class counsel).
- 22 d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
23 filed January 27, 2015) (court granted contested class certification and appointed
24 Kingsley & Kingsley as class counsel).
- 25 e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214).
26 contested class certification granted in June 2020.
- 27 f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
28 (BCV-16-102833), contested class certification granted in 2018.

1 g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
2 contested class certification granted in June 2020.

3 h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
4 contested class certification granted in August 2020.

5 121. Class Counsel is experienced in the handling of wage and hour class actions and
6 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
7 and reasonable and in the best interest of the Class.

8 122. After factoring in the risks explained above, Class Counsel believes that the
9 proposed settlement is fair and reasonable.

10 123. This allocation distributes Settlement Agreement funds proportionally to each class
11 member's potential damages and should therefore be approved as fair, adequate, and reasonable.

12 **SERVICE AWARD TO THE NAMED PLAINTIFF**

13 124. The Class Representative is entitled to an enhancement for her valiant effort and
14 time expended in this matter. The time spent by MARIA SANDOVAL NUNEZ is significant and
15 includes researching and retaining competent counsel; providing information to Class Counsel
16 regarding the nature of the work at Defendant; compiling relevant documents; working closely
17 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
18 discussing the status of the case with Class Counsel; discussing the case via telephone with many
19 Settlement Class Members; and responding promptly to Class Counsel's communications
20 regarding settlement.

21 125. As set forth in the Settlement Agreement, Plaintiff will also be entering into a
22 general release of liability pursuant to Civil Code Section 1542.

23 126. Class Counsel considers this to be a fair and reasonable enhancement. The
24 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
25 forward to litigate this matter on behalf of all Settlement Class Members. Plaintiff will provide a
26 detailed declaration with the Final Approval Motion detailing her participation and further
27 justification for the enhancement.

28 ///

EXHIBIT "1"

KINGSLEY & KINGSLEY, APC
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Attorneys for Plaintiff and all Proposed Class Members

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Attorneys for Defendant Merritt Hospitality, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIA SANDOVAL NUNEZ an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case Assigned for All Purposes to Judge
Maren Nelson in Dept. 17]

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

1 This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by
2 and between Plaintiff MARIA SANDOVAL NUNEZ, individually and on behalf of the Settlement
3 Class and the State of California, as a private attorney general, on the one hand, and Defendant
4 MERRITT HOSPITALITY, LLC on the other hand.

5 This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding
6 on Plaintiff, the current and former employees se seeks to represent, the Settlement Class, the
7 PAGA Members, the State of California, and on Defendant and subject to the definitions, recitals,
8 and terms set forth herein and the approval of the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” means the civil action filed in the Superior Court of the State of
12 California for the County of Los Angeles, entitled MARIA SANDOVAL NUNEZ, an individual,
13 on behalf of herself and others similarly situated, NUNEZ v. MERRITT HOSPITALITY, LLC,
14 and Does 1 thru 50, inclusive, Defendants, Case No. 20STCV07198 filed on February 25, 2020.

15 **2. Class Counsel**

16 “Class Counsel” means Kingsley & Kingsley, APC, who, subject to Court approval, shall
17 act as counsel for the Settlement Class.

18 **3. Class Counsel Award**

19 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
20 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
21 Lawsuit.

22 **4. Class Information**

23 “Class Information” or “Class Data” means information regarding Settlement Class
24 members that Defendant will in good faith compile from their records and provide to the
25 Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include:
26 each Settlement Class Member’s full name; last known address; last known home telephone
27 number; social security number; and dates of employment.

28 ///

1 **5. Class Members or Settlement Class Members**

2 “Class Members” or “Settlement Class Members” means all persons employed by
3 Defendant as hourly non-exempt employees at the Warner Center Marriott during the Class Period.

4 **6. Class Period**

5 “Class Period” means the period beginning February 25, 2016, up to January 22, 2021.

6 **7. Class Representative**

7 “Class Representative” means Plaintiff MARIA SANDOVAL NUNEZ.

8 **8. Class Representative Enhancement Award**

9 “Class Representative Enhancement Award” means the amount that the Court authorizes
10 to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of
11 Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in return for
12 executing a general release with Defendant.

13 **9. Work Weeks**

14 “Work Weeks” means the number of weeks in which Settlement Class Member(s) were
15 employed by Defendant at the Warner Center Marriott during the Class Period based on
16 Defendant's records.

17 **10. Complaint**

18 “Complaint” means the operative complaint, filed in the Action.

19 **11. Court**

20 “Court” means the Superior Court for the County of Los Angeles, State of California.

21 **12. Defendant**

22 “Defendant” means Defendant MERRITT HOSPITALITY, LLC.

23 **13. Effective Date**

24 “Effective Date” of the Settlement means the date on which the Court’s order granting
25 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
26 following events: (i) the day after the last day by which a notice of appeal of the order may be
27 timely filed with the California Court of Appeal, and none is filed; (ii) if an appeal is filed and is
28 finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a

request for further review of the Court of Appeal’s decision passes and no further review is requested; (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (iv) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement.

14. Final Approval Hearing

“Final Approval Hearing” means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

15. Final Approval Order

“Final Approval Order” means the proposed order granting final approval of the Parties’ settlement, in a form substantially similar to the order attached hereto as Exhibit C.

16. Final Judgment

“Final Judgment” means a judgment issued by the Court approving this Agreement as binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claim for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). The final judgment shall be disseminated to Settlement Class Members by way of the Settlement Administration website.

17. Gross Settlement Fund

“Gross Settlement Fund” means \$190,000 to be paid by Defendant in full settlement of the Released Claims, and includes without limitation the Class Counsel Award, Class Representative Enhancement Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs.

18. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Fund to a Participating Class Member, based upon his/her Work Weeks.

///

1 **19. LWDA**

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

3 **20. Net Settlement Fund**

4 “Net Settlement Fund” means the Gross Settlement Fund, less Court-approved Class
5 Counsel Award, Class Representative Enhancement Award, PAGA Payment, and Settlement
6 Administration Costs.

7 **21. Notice of Class Action Settlement**

8 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
9 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
10 Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated
11 Individual Settlement Payment. It is the notice approved by the Parties and subject to Court
12 approval explaining the terms of this Agreement and the settlement process, which the Settlement
13 Administrator will mail to each Settlement Class Member in English and Spanish.

14 **22. PAGA**

15 “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor
16 Code §§ 2699 et seq.

17 **23. PAGA Letter**

18 “PAGA Letter” means the letter that will be sent to the PAGA Members with their
19 individual PAGA Payments explaining the PAGA Payment.

20 **24. PAGA Member or Aggrieved Employee**

21 “PAGA Member” or “Aggrieved Employee” means all persons employed by Defendant as
22 hourly non-exempt employees at the Warner Center Marriott during the PAGA Period regardless
23 of whether they opt out of the Class Settlement.

24 **25. PAGA Payment**

25 “PAGA Payment” means the payment made hereunder to the LWDA and PAGA Members
26 pursuant to PAGA.

27 ///

1 **26. PAGA Payment Ratio**

2 “PAGA Payment Ratio” means respective pay periods during which a PAGA Member was
3 employed in proportion to the aggregate number of pay periods all PAGA Members were
4 employed.

5 **27. PAGA Period**

6 “PAGA Period” means the period beginning February 25, 2019, up to January 22, 2021.

7 **28. Participating Class Members**

8 “Participating Class Members” means those Class Members who did not file a valid and
9 timely Request for Exclusion pursuant to section III, paragraph 11 of this Agreement.

10 **29. Parties**

11 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
12 Plaintiff or Defendant, individually.

13 **30. Payment Ratio**

14 “Payment Ratio” means the respective Work Weeks during which an employee was
15 employed, in proportion to the aggregate number of Work Weeks all Settlement Class members
16 were employed.

17 **31. Plaintiff**

18 “Plaintiff” means Plaintiff MARIA SANDOVAL NUNEZ.

19 **32. Preliminary Approval Date**

20 “Preliminary Approval Date” means the date on which the Court issues an order granting
21 preliminary approval of the proposed settlement in a form substantially similar to the order
22 attached hereto as Exhibit B.

23 **33. Released Class Settlement Claims**

24 “Released Claims” means any and all claims that are asserted in the operative complaint
25 and which could have been asserted based on the facts alleged in the complaint, which are or could
26 be the basis of claims for failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512;
27 failure to provide rest breaks pursuant to Labor Code § 226.7; failure to pay wages pursuant to
28 Labor Code §§ 510, 1194, and 1199; penalties pursuant to Labor Code § 203, failure to issue

accurate itemized wage statements under Labor Code § 226(a); violation of Business & Professions Code § 17200; and claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties based upon Labor Code §§203, 226(a), 226.7, 510, 512, 1194, and 1199.

34. Released PAGA Claims

“Released PAGA Claims” means any and all claims for penalties under the Labor Code Private Attorneys General Act of 2004 for a violation of Labor Code §§203, 226(a), 226.7, 510, 512, 1194, and 1199.

35. Released Parties

“Released Parties” means Defendant, SWVP Warner Center Hotel, LLC and any of their respective former and present parents, subsidiaries, affiliates, officers, directors, employees, partners, members, shareholders, attorneys, agents, successors, assigns, or legal representatives.

36. Request for Exclusion

“Request for Exclusion” means a letter setting forth a Class Member’s name, present address, and a simple statement electing to be excluded from the Settlement.

37. Response Deadline

“Response Deadline” means the date sixty (60) days after the Settlement Administrator mails the Notice of Class Action Settlement to Settlement Class members, which is the last date on which Settlement Class members may: (a) submit a Request for Exclusion; (b) file and serve objections to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

38. Settlement

“Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to this Joint Stipulation of Class Action Settlement and Release of Claims.

39. Settlement Administrator

“Settlement Administrator” means the third-party company that the Parties have jointly selected to be responsible for administering the Settlement. This Settlement Administrator is ILYM Group, Inc.

1 **40. Settlement Administrator Costs**

2 “Settlement Administrator Costs” means the amount to be paid to the Settlement
3 Administrator from the Gross Settlement Fund for administration of this Settlement.

4 **II. RECITALS**

5 **1. Class Certification.**

6 The Parties stipulate to class certification for purposes of settlement only. If the Court does
7 not grant either preliminary or final approval of this Settlement, the Parties agree that this
8 stipulation regarding class certification will be revoked and the Parties will return to a point in
9 litigation prior to the execution of this Agreement.

10 **2. Procedural History.**

11 On February 25, 2020, Plaintiff filed a Class Action Complaint and a notice with
12 California’s Labor and Workforce Development Agency (“LWDA”) regarding her intent to file
13 an action seeking civil penalties under PAGA. On May 4, 2020, Plaintiff filed a First Amended
14 Complaint (“FAC”), adding the PAGA claim based on the facts previously alleged in the
15 Complaint.

16 The operative Complaint alleges claims for: (1) Failure to Provide Meal Breaks Pursuant
17 to Labor Code §§ 226.7 and 512; (2) Failure to Provide Rest Breaks Pursuant to Labor Code §
18 226.7; (3) Penalties Pursuant to Labor Code § 203; (4) Failure to issue accurate itemized wage
19 statements under Labor Code § 226(a); (5) Violation of Business & Professions Code § 17200;
20 and (6) Penalties Pursuant to Labor Code § 2699, et seq.

21 Pursuant to this agreement, Plaintiff will amend her Complaint to add a cause of action for
22 failure to pay wages pursuant to Labor Code §§510, 1194, and 1199. The Parties will jointly
23 stipulate to amendment of the Complaint.

24 After the matter was at issue, the Parties began to engage in informal discovery to
25 understand the nature of the allegations and the scope of potential liability. Defendant provided
26 Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could fully-
27 investigate the claims at issue and understand their strengths and weaknesses.

28 On November 23, 2020, the Parties attended a full-day mediation with experienced

mediator Hon. Jeffrey Krivis. The mediator made a settlement proposal that day and, in December 2020, the Parties accepted the settlement proposal, as provided herein, to settle Plaintiff's claims on a class-wide basis.

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in Plaintiff's Complaint, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. This Stipulation is a compromise of disputed claims. Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry out this Stipulation, shall be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other things, that, at all times, it has complied with all applicable state, federal and local laws related to the Settlement Class members' employment.

The Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Lawsuit, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Actions on the terms set forth herein.

3. Benefits of Settlement to Class Members.

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of

1 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
2 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
3 damages for the Settlement Class members. Plaintiff and Class Counsel have also taken into
4 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
5 members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that
6 settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair,
7 reasonable, and adequate and is in the best interest of the putative class in light of all known facts
8 and circumstances, including the risk of significant delay, defenses asserted by Defendant,
9 Defendant's financial condition, numerous potential appellate issues, and other risks inherent in
10 litigation.

11 **4. Defendant's Reasons for Settlement.**

12 Defendant has concluded that any further defense of this litigation would be protracted and
13 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
14 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
15 claims asserted by Plaintiff and Settlement Class members. Defendant has also taken into account
16 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
17 Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in
18 this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
19 forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has
20 complied with all applicable state, federal, and local laws.

21 **5. Settlement of Disputed Claims.**

22 This Agreement is a compromise of disputed claims. Defendant has claimed and continues
23 to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class
24 members have claimed and continue to claim that the Released Claims have merit and give rise to
25 liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing
26 contained in this Agreement, no documents referred to herein, and no action taken to carry out this
27 Agreement, may be construed or used as an admission by or against the Settlement Class members
28 or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

1 **III. TERMS OF AGREEMENT**

2 **1. Release as To All Participating Class Members.**

3 As of the Effective Date and payment of the Gross Settlement Fund by Defendant, the
4 Participating Class Members, including Plaintiff, release the Released Parties from the Released
5 Claims for the Class Period.

6 **2. Release as To All PAGA Members.**

7 As of the Effective Date and payment of the Gross Settlement Fund by Defendant, the
8 PAGA Members, including Plaintiff, release the Released Parties from the Released PAGA Claims
9 for the PAGA Period.

10 **3. Release of Claims by Plaintiff**

11 As of the Effective Date and payment of the Gross Settlement Fund by Defendant, Plaintiff
12 releases the Released Parties from all of the Released Claims during the Class Period. Plaintiff, for
13 herself and her heirs, successors and assigns, further waives, releases, acquits and forever
14 discharges the Released Parties from any and all claims, actions, charges, complaints, grievances
15 and causes of action, of whatever nature, whether known or unknown, which exist or may exist on
16 Plaintiff's behalf as of the date of this Agreement, including, but not limited to, any and all tort
17 claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit
18 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional
19 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
20 claims, and any and all claims arising under any federal, state or other governmental statute, law,
21 regulation or ordinance, including, but not limited to, claims for violation of the FLSA, the
22 California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other
23 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in
24 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
25 Rights Act of 1964, the California Fair Employment and Housing Act, the California Family
26 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California
27 Business & Professions Code §§17200 et seq., and any and all claims arising under any federal,
28 state or other governmental statute, law, regulation or ordinance.

1 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
2 Code §1542, which provides:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
4 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
5 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
6 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
7 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
8 **THE DEBTOR OR RELEASED PARTY.**

9 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
10 which she now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever
11 settle and release any and all claims against the Released Parties, known or unknown, suspected
12 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
13 of this Agreement, including, but not limited to, any and all claims relating to or arising from
14 Plaintiff's employment with Defendant.

15 **4. Tax Liability and Medicare.**

16 The Parties make no representations as to the tax treatment or legal effect of the payments
17 called for hereunder, and Settlement Class members are not relying on any statement or
18 representation by the Parties in this regard. Participating Class Member' understand and agree
19 that they will be responsible for the payment of taxes and penalties assessed on the payments
20 described herein and will hold the Parties free and harmless from and against any claims resulting
21 from treatment of such payments as non-taxable damages, including the treatment of such payment
22 as not subject to withholding or deduction for payroll and employment taxes. Moreover, this
23 Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The
24 Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42
25 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved
26 this matter in compliance with both state and federal law. The Parties made every effort to
27 adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff
28 warrants that she is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff
is not a Medicare recipient as of the date of this Agreement, no conditional payments have been
made by Medicare.

1 **5. Circular 230 Disclaimer.**

2 Each Party to this Agreement (for purposes of this section, the “acknowledging party” and
3 each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges
4 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
5 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
6 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
7 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
8 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
9 independent legal and tax counsel for advice (including tax advice) in connection with this
10 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
11 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
12 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
13 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
14 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
15 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
16 acknowledging party of the tax treatment or tax structure of any transaction, including any
17 transaction contemplated by this Agreement.

18 **6. Preliminary Approval of Settlement.**

19 Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying
20 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
21 The Motion for Preliminary Approval is set to be heard on March 18, 2021. All Parties agree to
22 work diligently and cooperatively to have this Settlement presented to the Court for preliminary
23 approval. The proposed preliminary approval order shall provide for the Notice of Class Action
24 Settlement to be sent to Settlement Class members as specified herein.

25 **7. Settlement Administrator.**

26 Within fourteen (14) days of the Court granting preliminary approval of this Agreement,
27 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
28 mailing the Notice of Class Action Settlement to the Settlement Class members. No later than three

(3) days after receipt of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has been received and state the number of Settlement Class members.

///

8. Notice by First Class U.S. Mail.

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within fifteen (15) days of receipt of the Class Information, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Settlement Class members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member, including performing a skip-trace to identify any updated addresses. 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.

9. Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the Settlement Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within five (5) days of receiving notice that a notice was undeliverable. Settlement Class members who receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty (20) days from the original Response Deadline.

10. Disputes Regarding Individual Settlement Payments.

Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the dates of employment stated on their Notice of Class Action Settlement, to provide documentation and/or an explanation to show contrary information by the Response Deadline via letter or email to the Settlement Administrator. If there is a dispute, the

1 Settlement Administrator will consult with the Parties to determine whether an adjustment is
2 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of,
3 any Individual Settlement Payments under the terms of this Agreement. The Settlement
4 Administrator's determination of the eligibility for and amount of any Individual Settlement
5 Payment shall be subject to review by the Court as needed. The Court's determination will binding
6 upon the Settlement Class members and the Parties. In the absence of circumstances indicating
7 fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of
8 accuracy.

9 **11. Disputes Regarding Administration of Settlement.**

10 Any disputes not resolved by the Settlement Administrator concerning the administration
11 of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
12 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
13 disputes without the necessity of involving the Court.

14 **12. Exclusions.**

15 The Notice of Class Action Settlement shall state that Settlement Class members who wish
16 to exclude themselves from the Settlement must submit a Request for Exclusion by the Response
17 Deadline by mail or email. The Request for Exclusion: (1) must contain the name and address of
18 the Settlement Class Member requesting exclusion; (2) must contain a statement expressing that
19 the Settlement Class Member wants to be excluded from the Settlement; (3) must be signed by the
20 Settlement Class Member; and (4) must be postmarked or fax stamped by the Response Deadline
21 and returned to the Settlement Administrator at the specified address or fax number. The Request
22 for Exclusion will be deemed invalid if it does not contain a Settlement Class Member's name,
23 address, and signature. The date of the postmark on the return mailing envelope or fax stamp on
24 the Request for Exclusion shall be the exclusive means used to determine whether a Request for
25 Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded
26 from the Settlement Class will not be entitled to any recovery under the Settlement and will not be
27 bound by the terms of the Settlement or have any right to object, appeal, or comment thereon.
28 However, any PAGA Member who opts out will still receive a pro rata share of the PAGA

1 Payment, and will be bound by the PAGA Release. Settlement Class members who fail to submit
2 a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by
3 all terms of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is
4 approved by the Court. No later than seven (7) calendar days after the Response Deadline, the
5 Settlement Administrator shall provide counsel for the Parties with a complete list of all members
6 of the Settlement Class who have timely submitted a Request for Exclusion.

7 **13. Objections.**

8 The Notice of Class Action Settlement shall state that Settlement Class members who wish
9 to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing.
10 Any written objection (“Notice of Objection”) must be mailed or emailed to the Settlement
11 Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed
12 the exclusive means for determining that a Notice of Objection was timely received. The Notice
13 of Objection must be signed by the Settlement Class Member and state: (1) the full name and
14 address of the Settlement Class Member; and (2) the basis for the objection. Class Counsel will
15 ensure that any Notice of Objection received by the Settlement Administrator by the Response
16 Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties
17 may file a responsive document to any objection before the Final Approval Hearing. Any attorney
18 who will represent an individual objecting to this Settlement who has not filed a written objection
19 must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant
20 no later than the Response Period Deadline. Class Counsel shall not represent any Settlement Class
21 members with respect to any such objections.

22 Any Class Member who fails to submit a timely written objection or to present an objection
23 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
24 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

25 **14. No Solicitation of Settlement Objections or Exclusions.**

26 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
27 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement
28 Class members to submit either written objections to the Settlement or requests for exclusion from

the Settlement, or to appeal from the Court's Final Judgment.

15. Funding and Allocation of Gross Settlement Fund.

The Gross Settlement Fund will be paid in six (6) monthly installments to the Settlement Administrator of \$31,666.66 starting no later than ten (10) days after the Effective Date. Thereafter on the first of each following month, Defendant shall make a monthly installment payment of \$15,833.33 until the Gross Settlement Fund is fully-funded.

16. Net Settlement Fund.

The Net Settlement Fund will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment, and Settlement Administrator Costs from the Gross Settlement Fund. The anticipated Net Settlement Fund is \$87,166.67. The Parties estimate the amount of the Net Settlement Fund as follows:

Gross Settlement Fund:	\$	\$190,000
Class Representative Enhancement Award:	\$	\$5,000.00
Class Counsel Fees:	\$	\$63,333.33
Class Counsel Costs:	\$	\$15,000.00
PAGA Payment	\$	\$10,000
		<i>(\$7,500 to the LWDA and \$2,500 to remain in the Net Settlement Fund)</i>
Settlement Administrator Costs:	\$	\$12,000
Net Settlement Fund	\$	\$87,166.67

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Fund, which includes, the Class Counsel Award, Class Representative Enhancement Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs. No portion of the Gross Settlement Fund will revert to Defendant. Defendant's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to Defendant's FICA and FUTA contributions, shall be paid separately from, and in addition to, the Gross Settlement Fund.

17. Individual Settlement Payments.

Individual Settlement Payments will be paid from the Net Settlement Fund and shall be

1 paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be
2 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing
3 address within seven calendar days after Defendant makes the final settlement payment. All
4 Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages and
5 eighty percent (80%) as interest and statutory penalties.

6 **18. Class Member's Payment Ratio.**

7 Participating Class Members will be paid on a pro-rata basis. A Participating Class
8 Member's Individual Settlement Payment will be based on the number of Workweeks during
9 which s/he was employed in proportion to the aggregate number of workweeks that all Settlement
10 Class members were employed.

11 **19. PAGA Payments**

12 The PAGA Payment is \$10,000 with 75% (\$7,500) allocated to the LWDA and 25%
13 (\$2,500) allocated to the PAGA Members on a pro rata basis based on the PAGA Payment Ratio.
14 PAGA Members will not be provided with the opportunity to opt out of the PAGA Settlement, and
15 PAGA Members shall be covered by the PAGA Release regardless of whether they request
16 exclusion from the Class Settlement. If the Court approves the PAGA Payment, the Claims
17 Administrator will mail out checks and the PAGA Letter to the PAGA Members at the same time
18 the Settlement Class Members are mailed their Individual Settlement Payments. No taxes will be
19 withheld from the PAGA Payments to PAGA Members.

20 **20. Payment to Class Members.**

21 Checks shall be made payable to each Participating Class Member for payment of each
22 Participating Class Member's Individual Settlement Payment as set forth in section III, paragraph
23 18 of this Agreement.

24 **21. Form of Payment to Class Member.**

25 The Individual Settlement Payment amount due to each Participating Class Member shall
26 be paid in the form of a check to each Participating Class Member.

27 **22. Unclaimed Settlement Payment(s).**

28 After one hundred and eighty (180) days of the mailing of the Individual Settlement

1 Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement
2 Payment checks will be transmitted to the State of California Office of the Controller Unclaimed
3 Property Fund in the name of the Participating Class Member who did not cash his/her Settlement
4 check. The Parties agree to coordinate their efforts to seek Court approval for such an escheatment
5 process of uncashed funds. If, for some reason, the Court does not approve the escheatment of
6 uncashed funds, the Parties agree to proceed pursuant to California Code of Civil Procedure section
7 384, distribute uncashed funds as described therein, and agree upon the non-profit Bet Tzedek
8 Legal Services as the cy pres designee pursuant to Code of Civil Procedure section 384(b)(3)(C).

9 **23. Class Representative Enhancement Award.**

10 Plaintiff will request that the Court approve a Class Representative Enhancement Award
11 of up to \$5,000.00. Subject to Court approval, in exchange for the release of all Released Claims
12 and for their time and effort in bringing and prosecuting this matter, Plaintiff shall be paid a Class
13 Representative Enhancement Award of up to \$5,000.00. The Class Representative Enhancement
14 Award shall be paid to Plaintiff on the same day that checks are mailed to Participating Settlement
15 Class Members. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiff
16 for her respective Class Representative Enhancement Award. Plaintiff shall be solely and legally
17 responsible to pay any and all applicable taxes on her Class Representative Enhancement Award
18 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes,
19 penalties, or interest arising as a result of the Class Representative Enhancement Award. The
20 Class Representative Enhancement Award shall be in addition to the Plaintiff's Individual
21 Settlement Payment as a Settlement Class Member. Any amount requested by Plaintiff for the
22 Class Representative Enhancement Award and not granted by the Court shall return to the Net
23 Settlement Fund and be distributed to Participating Class Members as provided in this Agreement.

24 **24. Class Counsel Award.**

25 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
26 thirty-three and one-third percent (33.33%) of the Gross Settlement Fund (\$190,000) which
27 amount is presently \$63,333.33. Class Counsel will request that the Court approve the
28 reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of

1 this matter from the Gross Settlement Fund not to exceed \$15,000.00. Class Counsel shall be paid
2 any Court-approved fees and costs on the same day that checks are mailed to Participating
3 Settlement Class Members. Class Counsel shall be solely and legally responsible to pay all
4 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator
5 shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this
6 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any
7 particular amount in attorneys’ fees and costs. Any amount requested by Class Counsel for the
8 Class Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be
9 distributed to Participating Class Members as provided in this Agreement.

10 **25. Settlement Administrator Costs.**

11 The Parties agree to allocate up to \$12,000 of the Gross Settlement Fund for Settlement
12 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
13 payments, credits and disbursements to Settlement Class members in the manner set forth herein,
14 calculated in accordance with the methodology set out in this Agreement and orders of the Court.
15 The Parties agree to cooperate in the Settlement administration process and to make all reasonable
16 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.
17 The Settlement Administrator shall be paid any Court-approved fees and costs on the same day
18 that checks are mailed to Participating Settlement Class Members. If the settlement administration
19 costs exceed \$12,000, the additional costs will be paid from the Gross Settlement Fund, subject to
20 Court approval.

21 **26. Responsibilities of the Settlement Administrator.**

22 The Settlement Administrator shall be responsible for the following: processing and
23 mailing payments to Plaintiff, Class Counsel, and Participating Class Members; making required
24 payment of taxes and tax reporting; printing, and mailing the Notice of Class Action Settlement
25 and tax forms to the Participating Class Members as directed by the Court; receiving and reporting
26 the requests for exclusion and objections submitted by Settlement Class members; providing
27 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and
28 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to

perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

27. Payment to the LWDA.

A total payment of \$10,000 from the Gross Settlement Fund will be allocated as the PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment or \$7,500 will be paid to the LWDA and the remaining twenty-five (25%) or \$2,500 shall be paid to PAGA Members.

28. Final Approval Hearing and Entry of Final Judgment.

Upon expiration of the Response Deadline, with the Court's permission, a final approval hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Enhancement Award; (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v) PAGA Payment.

29. Final Approval Order.

Plaintiff will request, and Defendant will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit B. Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement.

30. Nullification of Settlement Agreement.

In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. To the extent the total number of opt outs exceed 5%, Defendant has the option to nullify this settlement within ten (10) court days of the last day of the response period via a written notice to Plaintiff's counsel. If one or more of such events occur causing the Settlement Agreement to become null and void. the Parties shall

proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or Defendant will be solely responsible for the costs incurred for the settlement administration should it exercise its' option to nullify this agreement. The return of any paid Settlement funds to Defendant shall occur no later than five (5) business days after one or more of the triggering events leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator by Defendant within thirty (30) days of said notification.

31. Increase in Class Members.

It was represented to Class Counsel that the Settlement Class is estimated to be 261 people. Upon receipt of the Class Data, the Settlement Administrator shall confirm to Plaintiff that the Class Data is consistent with these representations. To the extent the number of Settlement Class members increases beyond 261 by more than 5%, Defendant shall have the option to increase the Gross Settlement Fund by a proportionate amount. For example, if the number of Settlement Class members increases by 6%, Defendant shall have the right to increase the Gross Settlement Fund by 6%. If the increase causes an increase of the cost of Settlement Administration beyond the amount that has been approved by the Court, Defendant shall separately bear the increased cost of Settlement Administration outside of the Gross Settlement Fund. If Defendant fails to increase the Gross Settlement Fund proportionately or remit payment of the increased cost of Settlement Administration, Plaintiff shall have the right to terminate this Agreement within ten (10) days of receipt of such notice from Defendant, and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

32. No Effect on Employee Benefits.

Amounts paid to Plaintiff or other Settlement Class members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,

1 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
2 of Plaintiff or Settlement Class members.

3 **33. No Admission by Defendant.**

4 Defendant denies any and all claims alleged in this Lawsuit and deny all wrongdoing
5 whatsoever. This Agreement is not a concession or admission and shall not be used against
6 Defendant as an admission or indication with respect to any claim of any fault, concession, or
7 omission by Defendant.

8 **34. Exhibits and Headings.**

9 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
10 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
11 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this
12 Agreement are inserted for convenience of reference only and do not constitute a part of this
13 Agreement.

14 **35. Interim Stay of Proceedings.**

15 Upon full execution of this Agreement, the Parties agree that based upon Code of Civil
16 Procedure §583.310 (“the 5-year rule”), the Lawsuit shall be stayed in its entirety except for the
17 proceedings necessary to implement and complete the Settlement.

18 **36. Amendment or Modification.**

19 This Agreement may be amended or modified only by a written instrument signed by
20 counsel for all Parties or their successors-in-interest.

21 **37. Entire Agreement.**

22 Apart from the fully executed Memorandum of Understanding, which the Parties
23 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
24 entire Agreement among these Parties, and no oral or written representations, warranties, or
25 inducements have been made to any Party concerning this Agreement or its Exhibits other than
26 the representations, warranties, and covenants contained and memorialized in the Agreement and
27 its Exhibits. The Parties are entering into this Agreement based solely on the representations and
28 warranties herein and not based on any promises, representation, and/or warranties not found

1 herein.

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3 **38. Authorization to Enter into Settlement Agreement.**

4 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
5 whom they represent to negotiate this Agreement and to take all appropriate actions required or
6 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
7 execute any other documents required to effectuate the terms of this Agreement. The Parties and
8 their counsel will cooperate with each other and use their best efforts to affect the implementation
9 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
10 any document needed to implement the Settlement, or on any supplemental provisions that may
11 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
12 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
13 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
14 Defendant. Plaintiff represents and warrants that she is authorized to sign this Agreement and that
15 she does have not assigned any claim, or part of a claim, covered by this Settlement to a third-
16 party.

17 **39. Binding on Successors and Assigns.**

18 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
19 of the Parties hereto, as previously defined.

20 **40. California Law Governs.**

21 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
22 according to the laws of the State of California.

23 **41. Counterparts.**

24 This Agreement may be executed in one or more counterparts. All executed counterparts
25 and each of them shall be deemed to be one and the same instrument.

26 **42. Jurisdiction of the Court.**

27 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
28 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this

Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Agreement are subject to approval by the Court.

43. Invalidity of Any Provision.

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

44. Enforcement.

If a Party to this Settlement Agreement institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights or obligations under this Settlement Agreement, then the prevailing Party shall recover from the unsuccessful Party, reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff, on behalf of herself, the Settlement Class members, the PAGA Members and the State of California, and Defendant has executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: February 10, 2021

DocuSigned by:

By: _____
9675F46279534B3
MARIA SANDOVAL NUNEZ

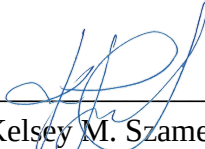
Dated: February 10, 2021


By: _____
MERRITT HOSPITALITY, LLC

1 **APPROVED AS TO FORM AND CONTENT:**

2
3 Dated: February 10, 2021

KINGSLEY & KINGSLEY APC

4
5 By: 
6 Kelsey M. Szamet
7 Attorneys for Plaintiff and all Proposed Class
8 Members

9 Dated: February 10, 2021

**BALLARD, ROSENBERG, GOLPER
& SAVITT, LLP**

10
11 By: 
12 Jeffrey P. Fuchsman
13 Attorneys for Defendant MERRITT
14 HOSPITALITY, LLC
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EXHIBIT “A”

[CLASS MEMBER NAME]

MARIA SANDOVAL NUNEZ v. MERRITT HOSPITALITY, LLC

**Superior Court of the State of California, County of Los Angeles
Case No.: 20STCV07198**

If you are a current or former employee for MERRITT HOSPITALITY, LLC (“Merritt Hospitality” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a class defined as:

“all persons employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during the Class Period.”
- The “Class Period” means the period beginning February 25, 2016, up to 60 days from November 23, 2020 or the date of preliminary approval of the settlement by the Court, whichever is earlier.
- You are receiving this Notice because the records reflect that you may be one of the above Class Members.
- Plaintiff in this class action alleges that Defendant failed to provide lawful meal and rest periods, failed to pay wages, failed to pay lawful wages upon termination or resignation, failed to provide accurate itemized wage statements, engaged in unfair business practices, and is liable for penalties under California’s Private Attorneys General Act or “PAGA.” Defendant denies Plaintiff’s claims and asserts that it has complied with all of its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.
- You will not be penalized or retaliated against by Merritt Hospitality for participating in this class action settlement. If you are currently employed by Merritt Hospitality, your employment will not be affected in any way. Current employees of Merritt Hospitality who choose to participate in the settlement will not be required to resign and can continue to work for Merritt Hospitality.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue Merritt Hospitality
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	for claims that Defendant failed to provide lawful meal and rest periods; failed to pay wages; failed to pay lawful wages upon termination or resignation; failed to provide accurate itemized wage statements; engaged unfair business practices; or is subject to PAGA penalties during the Class Period.
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Merritt Hospitality. If you ask to be excluded, you will not receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Merritt Hospitality for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

Your options are explained in this notice.
To opt out or object, you must act by XXXX.

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Merritt Hospitality's employees. You have received this notice because Merritt Hospitality's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on February 25, 2020 on behalf of all persons who are employed or have been employed as an hourly employee by Merritt Hospitality in the State of California. The operative complaint alleges class-wide causes of action against Merritt Hospitality for failure to provide lawful meal and rest periods under Labor Code §§ 226.7 and 512; failure to pay lawful wages upon termination or resignation under Labor Code § 203; failure to provide accurate itemized wage statements under Labor Code § 226(a); and unfair business practices under Business & Professions Code § 17200 et seq.; and penalties under the Labor Code Private Attorneys General Act, Labor Code § 2698 et seq. Plaintiff amended the complaint to add a claim for wages pursuant to Labor Code §§ 510, 1194, and 1199.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and her attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Fund is \$190,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Class Representative Enhancement Award to Class Representative: \$5,000.00
- Attorneys' fees: \$63,333.33
- Litigation Costs: \$15,000.00
- Penalties to the Labor & Workforce Development Agency: \$7,500
- Claims Administration Costs: \$12,000

After these deductions, \$87,166.67 will be available for payment to the Settlement Class members receiving this notice ("Net Settlement Fund").

Each Participating Class Member's Individual Settlement Payments shall be determined on a pro rata basis based upon the number of workweeks during which the employee worked in proportion to the aggregate number of workweeks by all Settlement Class members.

All Individual Settlement Payments will be allocated as follows: 20% to settlement of wage claims and 80% to settlement of claims for interest and statutory penalties.

According to Merritt Hospitality's records, the total number of workweeks that you worked as an employee *during the relevant time period* is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these workweeks, your estimated settlement amount is _____.

6. What if I disagree with the number of workweeks shown above?

If you believe the information in the notice is incorrect regarding the number of workweeks, you will need to write a letter or email setting forth the number of workweeks that you believe are correct. You may attach any relevant documentation in support thereof. You must mail or email your letter to:

Settlement Administrator
c/o ILYM Group, Inc.
[Physical Address]
[Email]
[Telephone Number]
[Settlement Website Address]

You must submit such information by **XXXX**. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute. Should it be necessary, the Court will review the dispute and make the final and binding determination.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all claims asserted in Plaintiff's First Amended Complaint as well as all allegations in her Second Amended Complaint. The members of the Settlement Class will release and discharge Defendant and Released Parties, any and all claims that are asserted in the operative complaint and which could have been asserted based on the facts alleged in the complaint, which are or could be the basis of claims for failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512; failure to provide rest breaks pursuant to Labor Code § 226.7; failure to pay wages pursuant to Labor Code §§ 510, 1194, and 1199; penalties pursuant to Labor Code § 203, failure to issue accurate itemized wage statements under Labor Code § 226(a); violation of Business & Professions Code § 17200; and claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties based upon Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, and 1199.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing or emailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, ILYM Group, Inc., by XXXX.

Settlement Administrator
c/o ILYM Group, Inc.
[Physical Address]
[Email]
[Telephone Number]
[Settlement Website Address]

Any request for exclusion: (1) must contain the name and address of the Settlement Class Member requesting exclusion; (2) must contain a statement expressing that the Settlement Class Member wants to be excluded from the Settlement; (3) must be signed by the Settlement Class Member; and (4) must be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax number. If your Request for Exclusion is

postmarked after XXXX, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Merritt Hospitality separately about the claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than XXXX by mail or email to:

Settlement Administrator
c/o ILYM Group, Inc.
[Physical Address]
[Email]
[Telephone Number]
[Settlement Website Address]

The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name and address of the Settlement Class Member; and (2) the basis for the objection.

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than _____. The Final Approval and Fairness Hearing will be held in Dept. 17 of the Los Angeles County Superior Court, on _____, 2021, at XX (a.m./p.m.) (Pacific Time).

<u>Class Counsel:</u> Eric B. Kingsley, Esq. Kelsey M. Szamet, Esq. Kingsley & Kingsley, APC 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 Telephone: (818) 990-8300	<u>Counsel for Merritt Hospitality, LLC:</u> Jeffrey P. Fuchsman, Esq. Ballard, Rosenberg, Golper & Savitt, LLP 15760 Ventura Blvd., 18th Floor Encino, CA 91436 Telephone: (818) 508-3700
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Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 17 of the Los Angeles County Superior Court, on _____, 2021, at XX (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's enhancement award, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Merritt Hospitality Settlement Administrator, ILYM Group, Inc. (listed above), or Class Counsel (listed above).

Please do not telephone the Court, the Office of the Clerk, or Merritt Hospitality's counsel for information regarding this settlement.

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
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eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
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Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and all Proposed Class Members

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jfuchsman@brgslaw.com
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Encino, CA 91436
Telephone: 818-508-3700/Fax: 818-506-4827

Attorneys for Defendant Merritt Hospitality, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA SANDOVAL NUNEZ an individual,
on behalf of herself and others similarly
situated

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case Assigned for All Purposes to Judge
Maren Nelson in Dept. 17]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: XX

Time: XX

Dept.: 17

Complaint Filed: February 25, 2020

FAC Filed: May 4, 2020

Trial Date: None Set

1 The Motion for Preliminary Approval of the Joint Stipulation of Class Action Settlement
2 and Release of Claims (“Settlement Agreement”), a copy of which is attached as to Plaintiff’s
3 Motion for Preliminary Approval of Class Action Settlement as Exhibit “1”, came before this
4 Court on XX. The Court, having considered the papers submitted in support of the motion of the
5 parties, **HEREBY ORDERS THE FOLLOWING:**

6 1. The Court grants preliminary approval of the Settlement Agreement and the
7 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The
8 Settlement is fair, adequate, and reasonable to the Class. The Court finds that: (a) the Agreement
9 resulted from extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant
10 notice of the Settlement to persons in the Settlement Class and a full hearing on the final approval
11 of the Settlement.

12 2. Settlement “Class Member(s)” means all persons employed by Defendant as hourly
13 non-exempt employees at the Warner Center Marriott during the Class Period.

14 3. “PAGA Member” or “Aggrieved Employee” means all persons employed by
15 Defendant as hourly non-exempt employees at the Warner Center Marriott during the PAGA
16 Period regardless of whether they opt out of the Class Settlement.

17 4. The Settlement falls within the range of reasonableness and appears to be
18 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
19 and final approval by this Court.

20 5. The Court makes the following preliminary findings for settlement purposes
21 only:

- 22 A. The Settlement Class, which consists of approximately 261 persons, is so
numerous that joinder of all members is impracticable;
- 23 B. There appear to be questions of law or fact common to the Settlement
24 Class for purposes of determining whether this Settlement should be
approved;
- 25 C. Plaintiff’s claims appear to be typical of the claims being resolved through
26 the proposed settlement;
- 27 D. Plaintiff appears to be capable of fairly and adequately protecting the
28 interests of the Settlement Class Members in connection with the proposed
settlement;

1 E. Common questions of law and fact appear to predominate over questions
2 affecting only individual persons in the Settlement Class. Accordingly,
3 the Settlement Class appears to be sufficiently cohesive to warrant
4 settlement by representation; and

5 F. Certification of the Settlement Class appears to be superior to other
6 available methods for the fair and efficient resolution of the claims of the
7 Settlement Class.

8 6. The Court approves, as to form and content, the Notice to Class Members in
9 substantially the form attached to the Settlement Agreement as Exhibit A (Class Notice).

10 7. The Court approves the procedure for Class Members to object to the Settlement as
11 set forth in the Class Notice to Class Members.

12 8. The Court approves the procedure for Class Members to become Participating Class
13 Members as set forth in the Claims Form to Class Members.

14 9. The Court directs the mailing of the Class Notice to Class Members by first class
15 mail to the Class Members in accordance with the Implementation Schedule set forth below. The
16 Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the
17 Implementation Schedule, meet the requirements of due process and provide the best notice
18 practicable under the circumstances and shall constitute due and sufficient notice to all persons
19 entitled thereto.

20 10. The Court confirms Eric B. Kingsley and Kelsey M. Szamet of Kingsley &
21 Kingsley, APC as Class Counsel.

22 11. The Court confirms MARIA SANDOVAL NUNEZ as the Class Representative.

23 12. The Court approves ILYM Group, Inc. as the Settlement Administrator.

24 13. The Court orders that pursuant to the California Private Attorneys General Act,
25 Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will
26 continue to be given to the Labor & Workforce Development Agency.

27 ///

14. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	XXXX
b.	Deadline for Defendant to Provide Class Data to Settlement Administrator	10 business days from Preliminary Approval
c.	Mail Notice to Class Members	15 calendar days from Settlement Administrator's receipt of Class Data
d.	Deadline for Class Members to Postmark a Request for Exclusion	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are

1 hereby stayed.

2 17. The Court expressly reserves the right to adjourn or continue the Final Fairness
3 Hearing from time to time without further notice to members of the Settlement Class.
4

5 **DATED:** _____

6 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT “C”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
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Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and all Proposed Class Members

BALLARD, ROSENBERG, GOLPER & SAVITT, LLP
Jeffrey P. Fuchsman, SBN – 105651
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15760 Ventura Blvd., 18th Floor
Encino, CA 91436
Telephone: 818-508-3700/Fax: 818-506-4827

Attorneys for Defendant Merritt Hospitality, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA SANDOVAL NUNEZ, an
individual, on behalf of the State of
California, as a private attorney general,

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case Assigned for All Purposes to Judge
Maren Nelson in Dept. 17]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX
Time: XX
Dept.: 17

Complaint Filed: February 25, 2020
FAC Filed: May 4, 2020
Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The above captioned Action is a class action lawsuit brought by Plaintiff MARIA
3 SANDOVAL NUNEZ (“Plaintiff”) against Defendant MERRITT HOSPITALITY, LLC
4 (“Defendant”). The Motion for Final Approval of Class Action Settlement came before this Court
5 on XX.

6 **WHEREAS**, Judge Maren Nelson granted preliminary approval of the Joint Stipulation of
7 Class Action Settlement and Release of Claims (“Settlement Agreement”), attached to the
8 concurrently filed Declaration of Kelsey M. Szamet as Exhibit 1, on XX.

9 **WHEREAS**, Plaintiff MARIA SANDOVAL NUNEZ has applied to the Court for an order
10 granting final approval of the Settlement Agreement.

11 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of the proposed
12 Settlement and for entry of an order of final approval and entry of final judgment thereon. The
13 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
14 Settlement; Motion for Approval of Approval of Attorneys’ Fees and Costs; the Declarations of
15 Kelsey M. Szamet, MARIA SANDOVAL NUNEZ, and XX of ILYM Group, Inc.; and the
16 supporting documents annexed thereto, now finds:

17 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

18 1. The Court has personal jurisdiction over all Settlement Class Members and that the
19 Court has subject matter jurisdiction to approve the Settlement;

20 2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and
21 in compliance with California Code of Civil Procedure, the California and United States
22 Constitutions (including the due process clauses), the California Rules of Court and any other
23 applicable law, and in the best interest of each of the Parties and the Class members and is hereby
24 finally approved in all respects.

25 3. The Parties are hereby directed to perform the terms of the Settlement as described
26 in the Settlement Agreement according to its terms and provisions.

27 4. The Settlement Agreement is binding on Plaintiff and all other Settlement Class
28 Members, except those timely and properly filed Requests for Exclusions, as well as their heirs,

executors, and administrators, successors, and assigns.

5. There are XX (XX) valid requests for exclusion.

6. It is ordered that the Settlement Class is certified for settlement purposes only. The Court finds that an ascertainable class exists and a well-defined community of interest exists in the questions of law and fact involved because in the context of the Settlement: (i) there are questions of law and fact common to the Class Members which, as to the Settlement and all related matters, predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of the Class members; and (iii) in negotiating, entering into and implementing the Settlement, Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest of the Class Members.

7. The Court finds that the Notice and notice methodology implemented pursuant to this Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement and their right to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of the California Code of Civil Procedure, the California and United States Constitution (including the Due Process Clause), the California Rules of Court and any other applicable law.

8. The Settlement Class is hereby made final. The Settlement Class is defined as: "all persons employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during the Class Period."

9. "PAGA Member" or "Aggrieved Employee" is defined as: "all persons employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during the PAGA Period regardless of whether they opt out of the Class Settlement."

10. The "Class Period" is: the period beginning February 25, 2016, up to 60 days from November 23, 2020 or the date of preliminary approval of the settlement by the Court, whichever is earlier.

11. The "PAGA Period" is: the period beginning February 25, 2019, up to the date of

1 preliminary approval of the settlement by the Court.

2 12. The Settlement Agreement is not an admission by Defendant, nor is this Final Order
3 a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final
4 Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the
5 Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or
6 wrongdoing on the part of Defendant.

7 13. Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and
8 each Settlement Class Member shall fully release and discharge the Released Parties pursuant to
9 the following release, which provides:

10 any and all claims that are asserted in the operative complaint and
11 which could have been asserted based on the facts alleged in the
12 complaint, which are or could be the basis of claims for failure to
13 provide meal breaks pursuant to Labor Code §§ 226.7 and 512;
14 failure to provide rest breaks pursuant to Labor Code § 226.7; failure
15 to pay wages pursuant to Labor Code §§ 510, 1194, and 1199;
16 penalties pursuant to Labor Code § 203, failure to issue accurate
17 itemized wage statements under Labor Code § 226(a); violation of
18 Business & Professions Code § 17200; and claims for restitution and
19 other equitable relief, liquidated damages, punitive damages, or
20 penalties based upon Labor Code §§203, 226(a), 226.7, 510, 512,
21 1194, and 1199.

22 14. Plaintiff and all Settlement Class Members who have not been timely and properly
23 excluded from the Settlement Class, and any person acting on their behalf, are permanently barred
24 and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class
25 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
26 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
27 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Class Members
28 into a separate class for purposes of pursuing as a purported class action (including by seeking to
amend a pending complaint to include class allegations, or by seeking class certification in a
pending action) any lawsuit based on or relating to the Released Claims;

15. The Settlement Agreement provides that the Gross Settlement Fund is \$190,000.
The Net Settlement Fund shall be determined according to the terms of the Settlement Agreement.

1 16. The Court orders the calculations and the payments to be made and administered in
2 accordance with the terms of the Settlement Agreement.

3 17. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
4 Settlement Class for purposes of entering into and implementing the settlement. The Court hereby
5 confirms Kingsley & Kingsley, APC as Class Counsel in the Action.

6 18. The Court hereby finds the unopposed application of Class Counsel for a costs and
7 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
8 of all the circumstances and is hereby granted. Of the Gross Settlement Fund, \$63,333.33 shall be
9 paid for attorney fees and \$15,000.00 shall be paid for litigation costs.

10 19. The unopposed application of Class Counsel for an Enhancement Award is hereby
11 granted. Of the Gross Settlement Fund, a \$5,000.00 Enhancement Award shall be allocated to
12 Named Plaintiff MARIA SANDOVAL NUNEZ.

13 20. The unopposed application of Class Counsel for claims administration fees to
14 ILYM Group, Inc. is hereby granted. Of the Gross Settlement Fund, \$12,000 shall be paid for
15 settlement administration fees.

16 21. The Court approves the PAGA Penalties in the amount of \$10,000. The Court
17 approves 75% of the PAGA Penalties being allocated to the LWDA in the amount of \$7,500. The
18 Court further directs that the remaining 25% of the PAGA Penalties, in the amount of \$2,500 shall
19 be allocated to the PAGA Members.

20 22. If a Settlement Class Member does not cash his or her settlement check within 160
21 days, the uncashed funds shall be transmitted to XX.

22 23. Defendant shall have no further liability for costs, expenses, interest, attorneys'
23 fees, or for any other charge, expense, or liability, except as provided for in the Settlement
24 Agreement.

25 24. The Parties are authorized, without further approval from the Court, to agree to and
26 to adopt such amendments, modifications and expansions of this Stipulation and all exhibits
27 attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of
28 Settlement Class Members under the Stipulation.

1 25. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
2 shall retain continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well
3 as the administration and enforcement of the terms of the Settlement of this action to enforce the
4 terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain
5 continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the
6 administration and enforcement of the Settlement. Any disputes or controversies arising with
7 respect to the interpretation, consummation, enforcement, or implementation of the Settlement
8 shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict
9 the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms
10 of the Settlement Agreement.

11 26. This Final Order shall constitute a final judgment.
12

13 **DATED:** _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT "2"



CO. FILE DEPT. CLOCK VCHR. NO.
H0C 913193 040152 0000520008 1

052-0001

MERRITT HOSPITALITY, LLC
C/O WARNER CENTER MARRIOTT
101 MERRITT 7 1ST FLOOR
NORWALK, CT 06851

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0
CA: 0

Social Security Number: XXX-XX-0958

Earnings	rate	hours	this period	year to date
Regular	16.6300	75.84	1,261.22	25,988.80
Overtime	24.8571	.07	1.74	1,558.18
Overtime	25.0000	.03	0.75	
Break Code	16.6300	1.00	16.63	313.32
Holiday				785.19
Paid Time Off				781.45
Gross Pay			\$1,280.34	29,426.94

Deductions	Statutory		
Federal Income Tax	-128.63		2,952.93
Social Security Tax	-79.38		1,824.47
Medicare Tax	-18.56		426.69
CA State Income Tax	-28.13		675.08
CA SUI/SDI Tax	-12.80		294.27
Net Pay		\$1,012.84	
CK1		-1,012.84	
Net Check		\$0.00	

Your federal taxable wages this period are
\$1,280.34

Earnings Statement



Period Beginning: 12/08/2019
Period Ending: 12/21/2019
Pay Date: 12/27/2019

MARIA L. SANDOVAL NUNEZ

Other Benefits and Information	this period	total to date
Total Work Hrs	75.94	
Pto Balance		50.03

Important Notes
YOUR EMPLOYER PHONE NUMBER IS 818-887-4800

© 2000 ADP, LLC



MERRITT HOSPITALITY, LLC
C/O WARNER CENTER MARRIOTT
101 MERRITT 7 1ST FLOOR
NORWALK, CT 06851

Advice number: 00000520008
Pay date: 12/27/2019

Deposited to the account of	account number	transit ABA	amount
MARIA L. SANDOVAL NUNEZ	xxxxx1886	xxxx xxxx	\$1,012.84

THIS IS NOT A CHECK

NON-NEGOTIABLE

Maria Nunez 0034

Proof of Submission to the LWDA

EXHIBIT "3"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On February 24, 2021, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey P. Fuchsman
jfuchsman@brgslaw.com
Ballard, Rosenberg, Golper & Savitt, LLP
15760 Ventura Blvd., 18th Floor
Encino, CA 91436

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC MAIL THROUGH CASE ANYWHERE:** On interested parties set forth on the attached service list.

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/271>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 24, 2021, at Woodland Hills, California.



Michelle A. Tanzer