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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 FINAL
APPROVAL OF CLASS SETTLEMENT
AND MOTION FOR APPROVAL OF
ATTORNEYS' FEES AND COSTS**

*[Filed concurrently with Motion for Final
Approval; Motion for Approval of Attorneys'
Fees and Costs; Declarations of Maria
Sandoval Nunez, and Makenna Snow,
Proposed Order, and Judgment]*

Date: May 26, 2022
Time: 9:00 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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1. I am an attorney licensed to practice before all of the courts of the State of California. I am partner in the law firm of Kingsley & Kingsley, APC and one of the attorneys of record for Plaintiff MARIA SANDOVAL NUNEZ in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

3. 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.

4. I have been involved in all of the settlement discussions leading to the present settlement as embodied in the Amended Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”). A true and correct copy of the Settlement is attached hereto as Exhibit “1”.

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

6. 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.

7. On February 25, 2020, Plaintiff filed a Class Action Complaint and a notice with

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

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

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

16 **THE DISCOVERY PROCESS AND MEDIATION**

17 10. After the matter was at issue, the Parties began to engage in informal discovery to
18 understand the nature of the allegations and the scope of potential liability. Defendant provided
19 Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could fully-
20 investigate the claims at issue and understand their strengths and weaknesses. This data included
21 Proposed Class data, Plaintiff’s payroll data, and Defendant’s internal policies.

22 11. The Parties agreed to mediate with experienced mediator, Jeff Krivis, Esq., and to
23 an informal exchange of documents and information related to the putative class.

24 12. Defendant produced a sampling of records and class data, including the timecards,
25 pay records, and written policies related to putative class members.

26 13. On November 23, 2020, the Parties attended a full-day mediation with experienced
27 mediator Jeffrey Krivis, Esq. Though the matter did not settle that day, the Parties continued to
28 work with the mediator and ultimately accepted the mediator’s settlement proposal to settle

1 Plaintiff's claims on a class-wide basis in December 2020.

2 14. Based on their own independent investigation and evaluation, Class Counsel is of
3 the opinion that the Settlement Agreement with Defendant is fair, reasonable, and adequate, and
4 in the best interest of the settlement classes in light of all known facts and circumstances, including
5 the risk of significant delay, defenses asserted by Defendant, the effects of Covid-19 on
6 Defendant's hotel operations, uncertainties regarding a class and representative action trial on the
7 merits, and numerous potential appellate issues. Although Defendant denies any liability,
8 Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation.
9 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise
10 and discharge all disputes and claims arising from or relating to the Action on the terms set forth
11 here.

12 **PRELIMINARY APPROVAL**

13 15. On June 29, 2021, the Court issued a checklist to the Parties pertaining to
14 deficiencies in the Settlement Agreement. In response, the Parties filed further briefing and a
15 revised Settlement Agreement. The matter came on for further hearing on November 23, 2021, at
16 which time the Court issued a further checklist and discussed with counsel. Following that
17 submission, the Parties executed an Amended Joint Stipulation of Class Action Settlement and
18 Release of Claims, filed on November 30, 2021 along with a Second Supplemental Declaration of
19 Plaintiff's counsel. On December 6, 2021, the Court issued an Order preliminarily approving the
20 settlement in this case, approving the proposed Class Notice, ordering that the Settlement
21 Administrator send notice to the Settlement Class, and setting a date for the Final Approval and
22 Fairness Hearing.

23 **SETTLEMENT**

24 16. For purposes of Settlement Agreement, the settlement class is defined as: "all
25 persons employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during
26 the Class Period." ("Settlement Class Members" or "Class Members")

27 17. As detailed fully in the Settlement Agreement, the Settlement provides for
28 Defendant to pay a Gross Settlement Fund of \$190,000.00, which includes the sum of the

1 Individual Settlement Payments, the Class Representative Enhancement Award, the Class Counsel
2 Award, PAGA Payment, and the Settlement Administration Costs.

3 **CLASS NOTICE**

4 18. The Court approved the proposed Class Notice and directed the mailing of the
5 Notice by first-class mail to Settlement Class Members in accordance with the proposed
6 implementation schedule.

7 19. Class Counsel has no relationship, financial or otherwise with ILYM Group, Inc.
8 other than a professional relationship arising out of working together on third-party settlement
9 administrations.

10 **CLASS COUNSEL'S KULLAR ANALYSIS**

11 20. All settlement discussions were made by experienced and informed counsel, who
12 believe that this settlement represents a favorable resolution for the Settlement Class Members.

13 21. The settlement negotiations have been, at all times, adversarial and non-collusive,
14 with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken
15 place.

16 22. This data included Proposed Class data, Plaintiff's payroll data, and Defendant's
17 internal policies.

18 23. Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the
19 exposure and risks associated with each claim alleged in the lawsuit.

20 24. Class Counsel have significant experience in cases of this type, including several
21 years prosecuting wage, hour, and working condition violations.

22 25. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the
23 best interests of the class and that the average recovery for each Settlement Class Member of
24 \$351.26 is substantial, given the risks inherent in litigation and the defenses asserted.

25 26. To prepare for mediation, Defendant's counsel provided Plaintiff's counsel with
26 the number of proposed Class Members for four (4) years prior to filing, the total number of former
27 employees in the class during the Class Period, the total number of Work Weeks at issue during
28 the Class Period, the total number of pay periods from one (1) year prior to the date the PAGA

1 letter was sent, and the average hourly rate of pay for the proposed Class.

2 27. Defense counsel also produced time and pay data for a random sampling of 50
3 individuals which accounted for a sample size of 20.08% of the Class Members (50 out of 249 at
4 the time).

5 28. This discovery permitted Class Counsel to fairly evaluate the strength of the case
6 and the risks associated with ongoing litigation.

7 29. Class Counsel worked with an expert to review and analyze the raw time and pay
8 data and to create a damage model to understand Defendant's maximum potential exposure for the
9 claims alleged.

10 30. Working with Class Counsel's expert and performing a margin of error calculation
11 using an online "Margin of Error Calculator" which is standard practice for Class Counsel's office,
12 Class Counsel determined that a sample of that size resulted in a 10% margin of error with a 90%
13 confidence band. Class Counsel believes that this is an acceptable margin of error for purposes of
14 mediation and settlement.

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

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

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

25 34. Plaintiff alleges that the underpayment was slight with the overtime rate being off
26 by a few cents.

27 35. Defendant strongly disputes this contention and argues that all overtime worked
28 was paid at the correct rate.

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

4 37. Plaintiff acknowledges that Defendant did pay overtime pay and the potential
5 dispute is limited to whether the rate is correct or not.

6 38. While Plaintiff alleged that the overtime rate was paid at a rate that was a few cents
7 off (lower) resulting in an alleged cumulative underpayment of approximately \$31,686.87 to the
8 Proposed Class, Defendant walked Plaintiff through its overtime calculations as part of the
9 negotiating process in an effort to establish that it was paying at the correct overtime rate.

10 39. Though the Court may find that Plaintiff's wage and overtime claim is certifiable,
11 even if Plaintiff were to prevail, the monetary damages are small because Plaintiff acknowledges
12 that alleged underpayment was quite small.

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

17 41. Plaintiff alleges that that her managers frequently told her that she could not take a
18 meal break during shifts, and Plaintiff contends that she was frequently refused a meal break.

19 42. Plaintiff's managers routinely instructed her to clock-out for meal breaks on the
20 premise that another employee would cover her position.

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

23 44. While Plaintiff is confident that certification of the meal period class is appropriate,
24 at the same time, it cannot be ignored that there are significant risks associated with moving
25 forward and attempting to certify the meal period claim.

26 45. Plaintiff must acknowledge that the Court might find that Defendant did in fact
27 maintain an accurate written meal period policy.

28 46. There was risk that at certification (and trial), Defendant would introduce evidence

1 that employees were regularly advised of the timing of meal periods.

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

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

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

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

17 51. Plaintiff must acknowledge Defendant's contention that Defendant maintained a
18 valid written meal break policy and that any missed or late meal periods were waived by the
19 employees. Plaintiff must concede that the data does seem to bear out Defendant's contentions
20 because the meal period violation rate is so low.

21 52. Plaintiff did not give significant value to the meal period claim and a significant
22 discount from the maximum settlement value of this claim is appropriate.

23 53. Just as with meal periods, Plaintiff alleges that was regularly and consistently told
24 by managers that she could not take rest breaks.

25 54. Defendant maintains that its policy makes rest breaks available and that no violation
26 has been committed.

27 55. While Plaintiff believes that certification of the rest period class is appropriate as a
28 result of Defendant's common policies, at the same time, it cannot be ignored that there are

1 significant risks associated with moving forward and attempting to certify the rest period claim.

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

6 57. The extent to which Defendant actually “provided” employees with lawful rest
7 periods according to its policy would be highly disputed were the case to have continued.

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

12 59. The reliance on Plaintiff’s experiences and further need for supportive testimony
13 through depositions and declarations (which will assuredly be countered with Defendants’ own
14 testimony) makes the value of this claim uncertain.

15 60. Unlike the meal period claim, there was no time data to analyze to determine the
16 rest period violation rate. Instead, for damages purposes, Plaintiff took the position that each and
17 every fractional shift triggered a rest period violation. Per this conclusion, Plaintiff’s Counsel
18 assessed the maximum potential liability on the rest period claim to be \$716,222.43 (\$17.13
19 average hourly rate x 41,811 eligible shifts). However, if the same violation rate found in the
20 records for missed and late meal periods of 7.2% were assumed for rest periods, the maximum
21 potential damages for the rest period claim is far smaller at \$51,568.01.

22 61. For the reasons stated, Plaintiff’s counsel believes that a considerable discount from
23 the maximum settlement value of this claim was required.

24 62. Plaintiff’s counsel has calculated the maximum value of the wage statement claim
25 under Labor Code section 226(a) to be \$65,550.00.

26 63. Plaintiff alleged that Defendant failed to accurately show Plaintiff’s and the
27 Proposed Class’ overtime rates on the wage statements it issued.

28 64. By way of example, attached hereto as Exhibit “6” is document Bates Stamped

1 Maria Nunez 0034.

2 65. This paystub reflects Plaintiff's hourly rate of \$16.63 per hour.

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

4 67. On Plaintiff's paystub, there are two overtime categories which show overtime rates
5 of \$24.85 and \$25.00.

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

8 69. While Plaintiff is confident that certification of the inaccurate wage statement claim
9 is appropriate, Plaintiff must acknowledge that there are significant risks associated with moving
10 forward and attempting to certify the inaccurate wage statement claim.

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

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

16 72. Because of the *Maldonado* argument, Plaintiff believes that a significant discount
17 is appropriate.

18 73. Plaintiff contends that Defendant failed to pay overtime at the correct rate for any
19 work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week.

20 74. The risk analysis for the section 203 claim flows from the risk analysis for the
21 underlying wage claim discussed above.

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

25 76. Plaintiff also contends that Defendant owes waiting time penalties by not paying
26 former alleged employees all wages owed and all premium payments for non-compliant meal or
27 rest periods. Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002)
28 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute "wages" under

1 Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and legislative
2 history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional
3 hour of pay’ is a premium wage, not a penalty”).

4 77. The Court in *Naranjo* recently held that unpaid break premiums do not entitle
5 employees to additional remedies under the California Labor Code for waiting time penalties.
6 *Naranjo, et al. v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444. Though *Naranjo*
7 is no longer citable as the California Supreme Court accepted review in late December 2019, this
8 issue is still undecided.

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

12 79. 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 80. 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 81. It cannot be ignored that Defendant’s financial status also poses a risk to recovery
20 by the Proposed Class. Defendant is a hotel in Southern California that was hugely impacted by
21 the state stay at home orders including travel restrictions. Indeed, this case was mediated in
22 November 2020 and for many months Defendant was closed altogether or under very restrictive
23 occupancy requirements. 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.

25 82. With the assistance of the mediator, these risks were carefully considered in the
26 negotiating process and further support Plaintiff’s belief that the settlement is fair, adequate, and
27 reasonable.

28 83. In consideration of the Court’s concerns raised at the hearing for preliminary

1 approval, the Parties determined a lump sum payment, rather than a payment plan, was more
2 reasonable.

3 84. There is significant expense associated with the class certification process, which
4 the Parties can avoid by entering into the contemplated Settlement Agreement now.

5 85. If the Court did eventually certify a class, trial of a case involving approximately
6 261 Settlement Class Members would require the retention of expensive expert witnesses, the
7 accrual of extensive litigation costs, and a significant time overlay by the parties.

8 86. Given the complexity and unsettled nature of the issues in this case it is likely that
9 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result
10 in further delay for the Settlement Class Members who are waiting for a resolution in this matter.

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

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

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

25 90. Working with a data expert, Plaintiff was able to analyze Defendant's maximum
26 potential exposure on the operative claims alleged.

27 91. Plaintiff assessed full value of the Wage/Overtime claim, without any discount, at
28 approximately \$31,686.87.

1 92. The full value of the Meal Period claim, without any discount, was approximately
2 \$43,432.27.

3 93. Plaintiff assessed the full value of the Rest Period claim, without any discount, was
4 approximately \$716,222.43.

5 94. Plaintiff determined that accepting a steep discount of these full amount was
6 appropriate.

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

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

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

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

14 99. Using \$100/\$200 per pay period, Plaintiff calculated the value of the PAGA claim
15 at \$131,100.00 for Settlement Class Members.

16 100. The main risk taken into account with PAGA is the discretionary nature of the
17 penalty award.

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

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

23 103. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
24 Settlement Class Members' claims was approximately \$1,022,043.68 (\$31,686.87 + \$43,432.27 +
25 \$716,222.43 + \$65,550.00 + \$34,427.51 + \$131,100.00).

26 104. As a result of the forgoing risks on the merits and the attendant discounts taken for
27 purposes of negotiating, Class Counsel believes the Gross Settlement Fund of \$190,000.00 is fair
28 and reasonable.

105. Class Counsel conducted a thorough investigation into the facts of the claims alleged. The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

ATTORNEY COMPETENCE

106. Kingsley & Kingsley is very experienced in prosecuting employment litigation, and since 2000 we have focused a substantial percentage of our practice on complex wage, hour, and working condition violations. My firm is extremely well-versed in class action litigation and has diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. Below is a small but representative sampling of wage and hour class cases handled by my firm:

- a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- b. *Daniel v. Network Management Corp.* (No. BC274004, L.A. Super. Ct.) In September 2003, the court granted final approval of Settlement in the gross amount of \$475,000 and the court approved the attorneys' fee request of 30%.
- c. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- d. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- e. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.
- f. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September

2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

g. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

h. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

i. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.

k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.

l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.

m. *Pineda, et al. v. Grimmway Enterprises, Inc.*, (No. BCV-15-101333, Kern Super.

1 Ct.) In January 2018, the Hon. Stephen D. Schuett granted final approval of
2 Settlement in the gross amount of \$9,000,000 with attorneys' fees request of
3 33.33%.

4 107. Kingsley & Kingsley, APC filed its first motion for class certification in the year
5 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions
6 that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved
7 for class certification in 15 matters and has successfully obtained class certification in 15 of those
8 cases. A brief sampling of which includes:

9 a. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
10 December 19, 2012) (court granted contested class certification and appointed
11 Kingsley & Kingsley class counsel).

12 b. *Amaro et al. v Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
13 filed February 3, 2014) (court granted contested class certification and appointed
14 Kingsley & Kingsley co-class counsel).

15 c. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
16 filed January 27, 2015) (court granted contested class certification and appointed
17 Kingsley & Kingsley class counsel).

18 d. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16C0214).
19 contested class certification granted in June 2020.

20 e. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
21 (BCV-16-102833), contested class certification granted in 2018.

22 f. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
23 contested class certification granted in June 2020.

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

26 108. After factoring in the risks explained above, Class Counsel believes that the
27 proposed settlement is fair and reasonable.

28 109. There is no governmental participant in this action except arguably the LWDA,

1 which has been provided with all relevant documents.

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

4 111. No opt outs or exclusions indicates that the reaction of Settlement Class Members
5 on the whole is positive and weighs in favor of approval.

6 **ATTORNEYS' FEE AWARD**

7 112. The Settlement has been preliminarily approved by the Court and the Notice of
8 Class Action Settlement disseminated pursuant to the terms of the Settlement.

9 113. As detailed fully in the Settlement and set forth above, the Settlement provides for
10 Defendant to create a Gross Settlement Fund of \$190,000.00. From that fund, Plaintiff requests
11 an award of attorneys' fees in the amount of \$63,333.33, or 1/3 of the Gross Settlement Fund
12 created on behalf of members of the Class.

13 114. Class Counsel extensively addressed the perceived risks in this case in the
14 concurrently filed Motion for Final Approval of Class Action Settlement and will not repeat that
15 analysis here. In addition to the complexity of this case, Class Counsel has borne the entire risk
16 and costs of this litigation during the entire time that it has been pending, all on a pure contingency
17 basis. Through the investment of substantial effort and resources, Class Counsel has secured an
18 outstanding Settlement of behalf of the Settlement Class Members. Defendant vigorously
19 contested liability, the amount of claimed damages, and the propriety of class certification. It is
20 this kind of situation, involving complex issues, that has been recognized as justifying a substantial
21 attorney fee award.

22 115. I am very familiar with the contingent fee market throughout California and in the
23 Los Angeles County area, particularly as it pertains to complex employment, wage and hour, and
24 class action litigation. On behalf of my firm, I have negotiated numerous contingency fee
25 agreements with plaintiffs, both as individuals and as representatives in class action suits. Many
26 of those agreements provided that counsel will receive a fee that is between 33% and 40% of any
27 recovery that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred
28 out of the recovery amount. The Class Representative in this action signed a contingency fee

1 agreement that stated that counsel would be able to make a fee of up to 40% of any recovery if the
2 case settles. These are typical and standard percentages in employment-related contingency
3 agreements throughout California. Indeed, in my opinion, the Class Members in this complex
4 wage and hour case could not have retained competent counsel in California, particularly with the
5 considerable skill and expertise of my firm, for any amount significantly less than the contingency
6 fee percentage provided in this retainer agreement. Class Counsel has never been paid any money
7 for attorneys' fees in this case and has advanced all costs.

8 116. There are always risks attendant to billing cases on a contingency basis. Those
9 risks are even higher in the current economic climate. Kingsley & Kingsley bills the vast majority
10 of its cases on contingency and has been affected by recent bankruptcy filings. In three separate
11 cases, *Lozoya v. Shore House Café, Inc.*, No. 30-2008-00082103-CU-OE-CJC (Orange Super. Ct.
12 filed Mar. 7, 2008) and *Davis v. Crossfire Marketing Group, LLC*, No. CIVRS1207797 (San
13 Bernardino Super. Ct. filed October 5, 2012), the defendants both filed for bankruptcy protection
14 in June 2011 and January 2015 after years of litigation. My firm advanced costs and incurred
15 thousands of dollars in fees that will never be recovered.

16 117. Additionally, there are cases where Class Counsel takes on the extreme risk of
17 attempting to certify a class case, often times turning down class or individual settlement offers
18 that Class Counsel feels are not in the best interest of the class, only to lose class certification and
19 the costs and fees associated with the litigation. *See e.g., Prosad v. Del Taco Restaurant Services,*
20 *Inc.*, No. BC426538 (L.A. Super. Ct. filed Nov. 2009); *Perez v. Safelite Group, Inc.*, CV-10-8653-
21 RGK(FFMx) (C.D. Cal. filed October 5, 2010).

22 118. When Class Counsel's motions for class certification are denied, Class Counsel
23 often appeals the orders. Sometimes, these denials are overturned (*Perez v. Safelite Group, Inc.*,
24 553 Fed.Appx. 667 (9th Cir. 2015); *Anderson v. Total Renal Care, Inc.*, No. B236207 (Cal. Ct.
25 App. 2012)) and other times Class Counsel is unsuccessful (*Prosad v. Del Taco Restaurant*
26 *Services, Inc.*, No. B238605 (CA. Ct. App. 2012)).

27 119. In addition to appealing class certification denials, Kingsley & Kingsley has been
28 involved in numerous lengthy and protracted appeals process before the California Court of

1 Appeal, the Ninth Circuit, the Seventh Circuit, and the United States Supreme Court. Our firm
2 specifically has taken and lost some issues on appeal that required the write-off of significant legal
3 fees. Also, our firm has been successful on appeal and overturned unfavorable lower court rulings
4 or successfully fought to have successful rulings affirmed. Below is just a sample of some of these
5 appeals:

- 6 a. *D'Este v. Bayer Corp.*, 565 F.3d 1119 (9th Cir. 2009) (lower court ruling that
7 pharmaceutical sales representatives are exempt employees affirmed);
- 8 b. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009) (lower
9 court ruling in employer's favor that certain employees can share in mandatory tip
10 pool affirmed);
- 11 c. *Etheridge v. Reins Int'l California, Inc.*, 172 Cal. App. 4th 908 (2009) (lower court
12 ruling in employer's favor that certain employees can share in mandatory tip pool
13 affirmed);
- 14 d. *Areso v. CarMax, Inc.*, 195 Cal. App. 4th 996 (2011) (lower court ruling in
15 employer's favor approving employer's commission pay plan affirmed) ;
- 16 e. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 183 L. Ed. 2d 153
17 (2012) (lower court ruling that pharmaceutical sales representatives are exempt
18 employees affirmed);
- 19 f. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court ruling
20 that pharmaceutical sales representatives are exempt employees affirmed);
- 21 g. *Fowler v. Carmax, Inc.*, No. B238426, 2013 WL 1208111 (Cal. Ct. App. Mar. 26,
22 2013), cert. granted, judgment vacated sub nom. *CarMax Auto Superstores*
23 *California, LLC v. Fowler*, 134 S. Ct. 1277, 188 L. Ed. 2d 290 (2014) (lower court
24 granted employer's motion to compel arbitration, Court of Appeal reversed, U.S.
25 Supreme Court affirmed lower court);
- 26 h. *Salazar v. Apple Am. Grp., LLC*, No. E059562, 2015 WL 314703 (Cal. Ct. App.
27 Jan. 26, 2015), review denied (Apr. 22, 2015), cert. denied, 136 S. Ct. 688, 193 L.
28 Ed. 2d 519 (2015) (lower court ruling in employee's favor on motion to compel

arbitration affirmed);

- i. *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) (lower court ruling in employee's favor on motion to compel arbitration affirmed);
- j. *Cortez v. Doty Bros. Equipment Company, Inc.* (2017) 15 Cal.App.5th 1 (reversing in part and affirming in part trial courts order compelling arbitration);
- k. *Lopez v. Friant & Associates, L.L.C.* (2017) 15 Cal.App.5th 773 (reversing summary judgement in favor of employer on wage statement claim);
- l. *Kane v. Valley Slurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8, 2018) (affirming judgement for employees after bench trial);
- m. *Kim v. Reins International California*, Case No. S246911. Oral argument was held before the California Supreme Court on January 6, 2020 and a decision was published in March 2020.

120. Unlike plaintiffs' firms, which bear the risk of loss on contingency cases, defense firms are able to bill their clients for time spent on a case. As verified by a survey conducted by the National Law Journal nearly a decade ago, six California firms provided their hourly billing rates and of the six firms, five regularly charged in excess of \$500 for their partners. In fact, four of these firms charged as high as \$600, \$620, \$650 and up to \$850 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County, and San Diego County. This survey is attached hereto as Exhibit 2.

121. While plaintiffs' firms strive to take on cases that are meritorious (for ethical as well as monetary reasons), as this Court knows, many of these cases hinge on the decision of class certification. Recently, there has been a renewed effort by defense counsel and/or their clients to challenge these cases and to push back, especially on certification motions. In addition, many novel legal issues have gone up on appeal, which has complicated the landscape for settlement.

CLASS COUNSEL'S HOURS AND HOURLY RATES ARE REASONABLE

122. Class Counsel's aggregate lodestar amounts to \$54,875.00 (without future hours), which represents 82.50 hours of attorney work on this litigation incurred from its inception through

1 the filing of Plaintiff's Motion for Final Approval.

2 123. As such, Class Counsel is asking for a very modest multiplier of 1.15.

3 124. The amount of time spent on this case (over 82.50 hours), which culminated in a
4 very favorable proposed Settlement for the Settlement Class Members, is reasonable given the
5 complexity and novelty of the issues involved, the vigorous defense, the length and intensity of
6 the litigation, and the exceptional results obtained.

7 125. Class Counsel litigated this action with great efficiency in light of the amount of
8 work required to achieve the Settlement.

9 126. The requested hourly rates in this case range from \$650.00 per hour to \$900.00.

10 127. Class Counsel's hourly rates are fully supported by their experience and reputation
11 in handling complex employment litigation, including wage and hour class actions.

12 128. Mr. Kingsley is a 24-year attorney with expertise in wage and hour class action
13 lawsuits.

14 129. He has litigated several hundred such cases, including at the appellate level at the
15 U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of
16 Appeal.

17 130. He is also a prolific speaker at various seminars on employment law and has
18 contributed to legal publications on employment topics.

19 131. In light of the impending increase of experienced lawyers in specialized practice, I
20 believe that the hourly rates charged by my firm are fair and reasonable and are comparable to or
21 less than those charged by my colleagues in California and the national market for prosecuting or
22 defending class actions.

23 132. My office billed for the following two attorneys for work performed on this case:
24 Eric Kingsley and me.

25 133. I am a partner at Kingsley & Kingsley, APC. I received my Bachelor of Arts
26 degree, *cum laude*, from the University of California San Diego and received my law degree from
27 UCLA School of Law in 2008, where I was active in the Women's Law Journal and community-
28 based legal clinics. I have been practicing since 2008 and am billed at \$650 per hour.

134. An article in the Wall Street Journal on February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour* states that “a review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.” The article also explains that “despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn.” Finally, the article notes that “the average highest rate paid for law-firm partners was \$875 an hour in 2015.” This article is attached hereto as Exhibit 3.

135. Class Counsel’s charged rates are commensurate with the prevailing market rates in Los Angeles County for attorneys of comparable experience and skill handling complex litigation.

136. Class Counsel’s rates in calculating the lodestar are the same rates charged to non-contingent hourly clients and thus necessarily reflect the current market value of counsel’s legal services.

137. Class Counsel has made all reasonable attempts to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing rates.

138. Finally, Class Counsel’s rates are in line with the 2021-2022 Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr. Kingsley, is \$919 and a reasonable rate for an attorney with 14 years of experience, such as Ms. Szamet, is \$764. A true and correct copy of the 2021-2022 Adjusted Laffey Matrix is attached hereto as Exhibit 4.

139. Kingsley & Kingsley’s attorneys’ fees in the present case are broken down as follows:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Eric B. Kingsley	5.00	\$900.00	\$4,500.00
Kelsey M. Szamet	77.50	\$650.00	\$50,375.00

KINGSLEY TOTAL			
ATTORNEYS' FEES	82.50		\$54,875.00¹

140. Kingsley & Kingsley, APC has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiff and witnesses and flushing out facts and issues;
- b. researching Defendant and other pending and former matters against Defendant;
- c. fact development and investigating Defendant's ownership structure;
- d. legal research re potential causes of action;
- e. researching private right of action and various impact on class actions;
- f. researching and analyzing relevant claims under B&P 17200;
- g. investigation and discussion regarding job functions, duties, compensation, policies, and procedures, etc.;
- h. regular meetings and or communicating with the Class Representative;
- i. regular meetings and or communicating with the firm's litigation team;
- j. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, Motion for Final Approval, various documents related to Final approval, etc.);
- k. preparing and analyzing damage model;
- l. preparing mediation brief;
- m. preparing for and attending mediation;
- n. discussing issues related to damage model calculations;
- o. negotiating the terms of the settlement;
- p. reviewing and making changes to the Settlement Agreement;
- q. drafting and editing all documents for Preliminary and Final Approval;
- r. monitoring Notice and settlement administration procedures;
- s. coordinating and overseeing all aspects of the administration of the Settlement

¹ The Total Attorneys' Fees does not include Class Counsel anticipated 10-15 hours of future time to handle the final approval hearing in July and to oversee the administration process.

(review documentation, approve form and content, etc.); and multiple communications with defense counsel.

141. Based on the aggregate lodestar, Class Counsel is requesting a multiplier of 1.15.

142. I believe the request for attorneys' fees in the amount of \$63,333.33 is fair and reasonable given the complexity and novelty of the issues involved, the vigorous defense, and the exceptional results obtained. As explained above, Class Counsel's diligent litigation efforts and experience led to an outstanding settlement.

FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER

143. This case dealt with difficult legal and factual questions. Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses. As discussed in detail in the extensive risk analysis section in Plaintiff's Motion for Preliminary Approval of Settlement, were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. There are genuine issues in dispute.

144. Class Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter as discussed.

145. To achieve the ultimate result in this case, Co-lead Class Counsel had to incur substantial risk and expense and were precluded from taking other fee generating employment for over 82.50 hours of attorney time.

146. This matter had been handled purely on a contingency fee basis and Class Counsel have advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting significant firm resources to prosecution of this matter.

147. Class Counsel believe this is an exceptional result that has been well received by Settlement Class Members.

ATTORNEY COSTS

148. In addition to their request for fees, Class Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this litigation, in the amount of \$14,455.77.

1 149. To date, Kingsley and Kingsley has incurred \$13,955.77 in costs.

2 150. Class Counsel anticipates incurring an additional \$500.00 in costs to file, serve, and
3 copy this motion; to prepare for and attend the hearing; fees to maintain CaseAnywhere; and for
4 future copy charges.

5 151. As such, Class Counsel is requesting a cost reimbursement of \$14,455.77.

6 152. All of the requested costs are reasonable in amount and were necessarily incurred
7 by Class Counsel in prosecuting this litigation.

8 153. All of these costs have been incurred in the course of this litigation, and all costs
9 advanced have already been paid by Class Counsel.

10 **THE NAMED PLAINTIFFS' ENHANCEMENT SHOULD BE APPROVED**

11 154. Plaintiff's Counsel request an enhancement of \$5,000.00 to the Class
12 Representative MARIA SANDOVAL NUNEZ for her work on behalf of the Settlement Class.

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

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

22 157. Class Counsel considers this to be a fair and reasonable enhancement.

23 158. The enhancement takes into consideration the time, effort, and expense incurred by
24 Ms. Nunez in coming forward to litigate this matter on behalf of all Settlement Class Members.

25 159. Additionally, the Class Representative was at risk for paying for Defendant's legal
26 fees and costs in the event that Defendant prevailed at trial.

27 160. Plaintiff Nunez was also at risk of for paying Defendant's legal fees and costs in
28 the event that Defendant prevailed at trial.

1 161. The Class has benefited from Ms. Nunez’s action in stepping forward on their
2 behalf to bring this lawsuit.

3 162. Further, the Class Notice disclosed the enhancement award.

4 163. As of today, no Settlement Class Member has objected to the proposed
5 enhancement.

6 164. Under the circumstances, a representative payment of \$5,000.00 is justified and the
7 Court should award this payment to MARIA SANDOVAL NUNEZ from the Gross Settlement
8 Fund as provided in the Settlement.

9 **PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**

10 **AGENCY**

11 165. As indicated on the Proof of Service, Plaintiff’s accompanying Motion for Final
12 Approval of Attorneys’ Fees and Costs (“Motion”) was uploaded to the Labor and Workforce
13 Development Agency’s (“LWDA”) website on the date this Motion was filed. Proof of submission
14 of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming
15 receipt is attached hereto as Exhibit “7”.

16 **EXHIBITS**

17 166. Attached hereto as Exhibit “1” is a true and correct copy of the fully executed
18 Amended Joint Stipulation of Class Action Settlement and Release of Claims that was preliminary
19 approved by this Court on December 6, 2021.

20 167. Attached hereto as Exhibit “2” is a true and correct copy of the ALM Research
21 2007 NLJ Billing Survey.

22 168. Attached hereto as Exhibit “3” is a true and correct copy of Wall Street Journal on
23 February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour*.

24 169. Attached hereto as Exhibit “4” is a true and correct copy of the 2021-2022 Adjusted
25 Laffey Matrix.

26 170. Attached hereto as Exhibit “5” is a true and correct copy of the Kingsley &
27 Kingsley, APC costs ledger reflecting costs incurred in this matter.

28 171. Attached hereto as Exhibit “6” is a true and correct copy of document Bates

1 Stamped Maria Nunez 0034.

2 172. Attached hereto as Exhibit "7" is a true and correct copy of the proof of submission
3 to the LWDA as referenced in paragraph 165 above.

4 I declare under penalty of perjury under the laws of the state of California that foregoing
5 is true and correct.

6 This declaration was executed this 4th day of May, 2022, in Altadena, California.

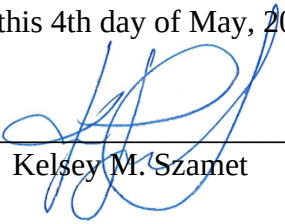
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EXHIBIT "1"

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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]

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

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

5 This Amended Joint Stipulation of Class Action Settlement and Release of Claims shall be
6 binding on Plaintiff, the current and former employees se seeks to represent, the Settlement Class,
7 the PAGA Members, the State of California, and on Defendant and subject to the definitions,
8 recitals, 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 violations set forth in Plaintiff’s amended PAGA letter sent on July 1, 2021 and nothing else. The amended PAGA letter is attached hereto as Exhibit D.

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) mail or email written objections to the settlement to the Settlement Administrator; 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 adviser 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 Settlement Administrator will consult with the Parties to determine whether an adjustment is

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

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

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

13 **12. Exclusions.**

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

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

6 **13. Objections.**

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

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

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

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

1 **15. Funding and Allocation of Gross Settlement Fund.**

2 The Gross Settlement Fund will be paid in a lump sum of \$190,000.00 10 days after the
3 Effective Date.

4 **16. Net Settlement Fund.**

5 The Net Settlement Fund will be determined by the Settlement Administrator by
6 subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment,
7 and Settlement Administrator Costs from the Gross Settlement Fund. The anticipated Net
8 Settlement Fund is \$87,166.67. The Parties estimate the amount of the Net Settlement Fund as
9 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:	\$	\$8,500
Net Settlement Fund	\$	\$90,666.67

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

24 **17. Individual Settlement Payments.**

25 Individual Settlement Payments will be paid from the Net Settlement Fund and shall be
26 paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be
27 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing
28 address within seven calendar days after Defendant makes the final settlement payment. All

Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages and eighty percent (80%) as interest and statutory penalties.

18. Class Member's Payment Ratio.

Participating Class Members will be paid on a pro-rata basis. A Participating Class Member's Individual Settlement Payment will be based on the number of Workweeks during which s/he was employed in proportion to the aggregate number of workweeks that all Settlement Class members were employed. Said differently, the total number of workweeks will be divided by the net settlement amount to determine a per workweek amount. This per workweek amount will be multiplied by the Participating Class Members individual workweeks to determine their award. PAGA Member payments are based on workweeks during the PAGA statute of limitations and only the Net PAGA penalty amount will be divided amongst that group. In a similar fashion to Participating Class Members, the total number of workweeks for PAGA Members will be divided by the net settlement amount to determine a per workweek amount. This per workweek amount will be multiplied by the PAGA Members individual workweeks to determine their PAGA award.

19. PAGA Payments

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

20. Payment to Class Members.

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

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

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

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

5 After one hundred and eighty (180) days of the mailing of the Individual Settlement
6 Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement
7 Payment checks will be transmitted to the State of California Office of the Controller Unclaimed
8 Property Fund in the name of the Participating Class Member who did not cash his/her Settlement
9 check. The Parties agree to coordinate their efforts to seek Court approval for such an escheatment
10 process of uncashed funds. If, for some reason, the Court does not approve the escheatment of
11 uncashed funds, the Parties agree to proceed pursuant to California Code of Civil Procedure section
12 384, distribute uncashed funds as described therein, and agree upon the non-profit Bet Tzedek
13 Legal Services as the cy pres designee pursuant to Code of Civil Procedure section 384(b)(3)(C).

14 **23. Class Representative Enhancement Award.**

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

1 **24. Class Counsel Award.**

2 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
3 thirty-three and one-third percent (33.33%) of the Gross Settlement Fund (\$190,000) which
4 amount is presently \$63,333.33. Class Counsel will request that the Court approve the
5 reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of
6 this matter from the Gross Settlement Fund not to exceed \$15,000.00. Class Counsel shall be paid
7 any Court-approved fees and costs on the same day that checks are mailed to Participating
8 Settlement Class Members. Class Counsel shall be solely and legally responsible to pay all
9 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator
10 shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this
11 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any
12 particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the
13 Class Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be
14 distributed to Participating Class Members as provided in this Agreement.

15 **25. Settlement Administrator Costs.**

16 The Parties agree to allocate up to \$8,500 of the Gross Settlement Fund for Settlement
17 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
18 payments, credits and disbursements to Settlement Class members in the manner set forth herein,
19 calculated in accordance with the methodology set out in this Agreement and orders of the Court.
20 The Parties agree to cooperate in the Settlement administration process and to make all reasonable
21 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.
22 The Settlement Administrator shall be paid any Court-approved fees and costs on the same day
23 that checks are mailed to Participating Settlement Class Members. If the settlement administration
24 costs exceed \$12,000, the additional costs will be paid from the Gross Settlement Fund, subject to
25 Court approval.

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

27 The Settlement Administrator shall be responsible for the following: processing and
28 mailing payments to Plaintiff, Class Counsel, and Participating Class Members; making required

1 payment of taxes and tax reporting; printing, and mailing the Notice of Class Action Settlement
2 and tax forms to the Participating Class Members as directed by the Court; receiving and reporting
3 the requests for exclusion and objections submitted by Settlement Class members; providing
4 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and
5 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to
6 perform. The Settlement Administrator shall keep the Parties timely apprised of the performance
7 of all Settlement Administrator responsibilities.

8 **27. Payment to the LWDA.**

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

13 **28. Final Approval Hearing and Entry of Final Judgment.**

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

19 **29. Final Approval Order.**

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

25 **30. Nullification of Settlement Agreement.**

26 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
27 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as
28 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement

1 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
2 of this Settlement shall be treated as void from the beginning. To the extent the total number of
3 opt outs exceed 5%, Defendant has the option to nullify this settlement within ten (10) court days
4 of the last day of the response period via a written notice to Plaintiff's counsel. If one or more of
5 such events occur causing the Settlement Agreement to become null and void, the Parties shall
6 proceed in all respects as if this Agreement had not been executed, except that any fees already
7 incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or
8 Defendant will be solely responsible for the costs incurred for the settlement administration should
9 it exercise its' option to nullify this agreement. The return of any paid Settlement funds to
10 Defendant shall occur no later than five (5) business days after one or more of the triggering events
11 leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or
12 any other appellate review is sought, administration of the Settlement shall be stayed pending final
13 resolution of the appeal or other appellate review, but any fees incurred by the Settlement
14 Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment,
15 or any other appellate review, shall be paid to the Settlement Administrator by Defendant within
16 thirty (30) days of said notification.

17 **31. Increase in Class Members.**

18 It was represented to Class Counsel that the Settlement Class is estimated to be 261 people.
19 Upon receipt of the Class Data, the Settlement Administrator shall confirm to Plaintiff that the
20 Class Data is consistent with these representations. To the extent the number of Settlement Class
21 members increases beyond 261 by more than 5%, Defendant shall have the option to increase the
22 Gross Settlement Fund by a proportionate amount. For example, if the number of Settlement Class
23 members increases by 6%, Defendant shall have the right to increase the Gross Settlement Fund
24 by 6%. If the increase causes an increase of the cost of Settlement Administration beyond the
25 amount that has been approved by the Court, Defendant shall separately bear the increased cost of
26 Settlement Administration outside of the Gross Settlement Fund. If Defendant fails to increase the
27 Gross Settlement Fund proportionately or remit payment of the increased cost of Settlement
28 Administration, Plaintiff shall have the right to terminate this Agreement within ten (10) days of

1 receipt of such notice from Defendant, and the Parties will be restored to their positions prior to
2 the Settlement and the Settlement shall be null and void.

3 **32. No Effect on Employee Benefits.**

4 Amounts paid to Plaintiff or other Settlement Class members pursuant to this Agreement
5 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
6 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
7 of Plaintiff or Settlement Class members.

8 **33. No Admission by Defendant.**

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

13 **34. Exhibits and Headings.**

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

19 **35. Interim Stay of Proceedings.**

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

23 **36. Amendment or Modification.**

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

26 **37. Entire Agreement.**

27 Apart from the fully executed Memorandum of Understanding, which the Parties
28 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the

1 entire Agreement among these Parties, and no oral or written representations, warranties, or
2 inducements have been made to any Party concerning this Agreement or its Exhibits other than
3 the representations, warranties, and covenants contained and memorialized in the Agreement and
4 its Exhibits. The Parties are entering into this Agreement based solely on the representations and
5 warranties herein and not based on any promises, representation, and/or warranties not found
6 herein.

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

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

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

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

24 **40. California Law Governs.**

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

27 **41. Counterparts.**

28 This Agreement may be executed in one or more counterparts. All executed counterparts

and each of them shall be deemed to be one and the same instrument.

42. Jurisdiction of the Court.

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain 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.

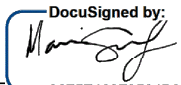
44. Enforcement.

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: November 26, 2021

By: 
9675F46279534B3...
MARIA SANDOVAL NUNEZ

Dated: _____

By: _____
MERRITT HOSPITALITY, LLC

and each of them shall be deemed to be one and the same instrument.

42. Jurisdiction of the Court.

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain 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: _____

By: _____
MARIA SANDOVAL NUNEZ

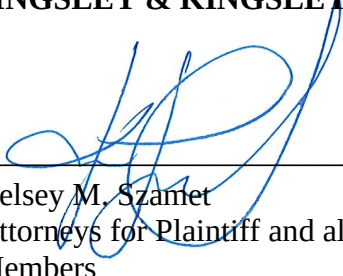
Dated: 11/29/2021

By:  _____
MERRITT HOSPITALITY, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: November 29, 2021

KINGSLEY & KINGSLEY APC

By: 
Kelsey M. Szamet
Attorneys for Plaintiff and all Proposed Class
Members

Dated: _____

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

By: _____
Jeffrey P. Fuchsman
Attorneys for Defendant MERRITT
HOSPITALITY, LLC

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

2
3 Dated: _____

KINGSLEY & KINGSLEY APC

4
5 By: _____

6 Kelsey M. Szamet
7 Attorneys for Plaintiff and all Proposed Class
8 Members

9 Dated: 11/29/2021

**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 January 22, 2021.
- 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.
- The “PAGA Period” means the period beginning February 25, 2019, up to January 22, 2021.
- “PAGA Member” or “Aggrieved Employee” means 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. Accordingly, you will still receive a pro rata share of the PAGA Payment even if you opt and, and you will be bound by the PAGA Release (See Section 8 Below).
- 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 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 <u>will not</u> 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: \$8,500

After these deductions, \$90,666.67 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 class settlement amount is _____. Your estimated PAGA 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: 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.

If you were employed during the PAGA Period, you will also Release: violations set forth in Plaintiff's amended PAGA letter sent on July 1, 2021 and nothing else.

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.

You may appear in-person or remotely at the final approval hearing. You may appear in person by appearing at Dept. 17 of the Los Angeles County Superior Court on _____, 2021, at **XX (a.m./p.m.)** (Pacific Time). The address is 312 N Spring St, Los Angeles, CA 90012. You may appear remotely by [Settlement Admin to insert specific link once we secure from Court.]

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).

14. Please keep the Settlement Administrator advised of any change of address.

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

15. How will notice of final judgment be given to the class?

Notice of the final judgment will be posted on the settlement website by the Settlement Administrator.

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
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
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
jfuchsman@brgslaw.com
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 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)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
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
jfuchsman@brgslaw.com
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 “D”

KINGSLEY & KINGSLEY

| L A W Y E R S |

July 1, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Merritt Hospitality, LLC
101 Merritt 7, 1st Floor
Norwalk, CT 06851

Re: MARIA SANDOVAL NUNEZ v. MERRITT HOSPITALITY, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents MARIA SANDOVAL NUNEZ (“Plaintiff”) and a proposed group of current and former employees working for MERRITT HOSPITALITY, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of two groups of aggrieved employees defined as:

1. All persons who are employed or have been employed by MERRITT HOSPITALITY, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“Aggrieved Employees”).
2. All persons employed or formerly employed by MERRITT HOSPITALITY, LLC, who worked at the front desk at one of MERRITT HOSPITALITY, LLC’s California properties for one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“Suitable Seating Aggrieved Employees”).

Defendant has violated Labor Code §§ 510, 1194, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of (8) eight hours in one workday and any work in excess of forty (40) hours in any one workweek.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all Aggrieved Employees. Plaintiff and other Aggrieved Employees were not properly compensated

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

July 1, 2021

Page 2 of 3

for all hours worked over eight (8) hours in one day or forty (40) hours in one week at the appropriate overtime rate.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (5-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code §226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the Aggrieved Employees of their rights associated with meal periods by way of a lawful meal period policy and failed to provide compliant meal periods. Defendant required Plaintiff and the Aggrieved Employees to work shifts without providing them with meal periods of at least thirty minutes in length within the first five hours of their shifts and failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first five (5) hours of the shift.

Labor Code § 226.7 and Wage Order 5-2001 require Defendant to provide Plaintiff and the Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. On a regular and consistent basis, Defendant failed to provide Plaintiff and the Aggrieved Employees with compliant rest periods. Further, Plaintiff and the Aggrieved Employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant issued Plaintiff and the Aggrieved Employees itemized wage statements that do not accurately show overtime rates in violation of Labor Code §226(a)(9). Further, Plaintiff and the Aggrieved Employees are issued wage statements that do not include meal premiums as a result of the claims alleged above.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

July 1, 2021

Page 3 of 3

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all Aggrieved Employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

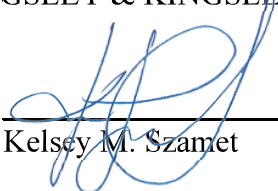
Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Additionally, Labor Code § 1198 states that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees and forbids the employment of any employee under conditions of labor prohibited by the commission’s wage orders. IWC Wage Order 5-2001 requires employers to provide employees with suitable seats when the nature of work reasonably permits the use of seats. (See *Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4th 1472, 1481-1482.)

Here, Defendant did not provide suitable seats for Suitable Seating Aggrieved Employees even though the nature of work reasonably permitted the use of seats. Suitable Aggrieved Employees’ duties mainly consist of assisting customers at the front desk. This could have been performed while seated, but Suitable Aggrieved Employees had to stand at their workstations for hours a time because Defendant failed to provide seats.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1198, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Merritt Hospitality, LLC via USPS Certified Mail # 7019 2970 0001 4016 5134

EXHIBIT "2"

	A	C	D	E	F	G	H	I	J	K	L
1											
2											
3											
4											
5											
6	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
7	Adams and Reese	\$500	\$225	\$255	\$165	\$198	\$305	\$278	\$197	\$300	\$275
8	Andrews Kurth	\$795	\$400	\$460	\$210						
9	Arent Fox	\$675	\$395	\$440	\$240						
10	Armstrong Teasdale	\$450	\$295	\$295	\$165						
11	Baker, Donelson, Bearman, Caldwell & Berkowitz	\$525	\$230	\$315	\$160	\$205	\$325	\$280	\$200	\$320	\$270
12	Barnes & Thornburg	\$485	\$265	\$295	\$180	\$225	\$350	\$302	\$220	\$355	\$310
13	Bass, Berry & Sims PLC	\$575	\$300	\$285	\$180						
14	Best Best & Krieger	\$495	\$290	\$350	\$160	\$203	\$275	\$212	\$235	\$390	\$265
15	Bond, Schoeneck & King	\$435	\$200	\$250	\$140	\$179	\$294	\$253	\$175	\$295	\$300
16	Bradley Arant Rose & White	\$520	\$240	\$280	\$180	\$211	\$335	\$258	\$205	\$330	\$260
17	Briggs and Morgan	\$500	\$250	\$325	\$195	\$233	\$391	\$344	\$230	\$395	\$350
18	Brinks Hofer Gilson & Lione	\$650	\$300	\$410	\$180	\$273	\$479	\$365	\$250	\$485	\$350
19	Broad and Cassel	\$450	\$250	\$310	\$165	\$232	\$361	\$294	\$225	\$360	\$275
20	Brownstein Hyatt Farber Schreck	\$675	\$260	\$270	\$170	\$219	\$373	\$308	\$218	\$390	\$325
21	Bryan Cave	\$695	\$320	\$495	\$165	\$295	\$493	\$394	\$295	\$490	\$375
22	Buchanan Ingersoll & Rooney	\$750	\$320	\$460	\$150						
23	Bullivant Houser Bailey	\$500	\$225	\$350	\$150	\$240	\$285	\$260	\$220	\$275	\$250
24	Burr & Forman	\$470	\$250	\$305	\$175	\$235	\$340				
25	Butzel Long	\$575	\$210	\$350	\$155						
26	Carlton Fields	\$600	\$280	\$375	\$190	\$243	\$406	\$312	\$245	\$405	\$300
27	Cooley Godward Kronish	\$875	\$470	\$555	\$250						
28	Covington & Burling	\$800	\$510	\$525	\$240						
29	Cozen O'Connor	\$750	\$230	\$530	\$155	\$283	\$420	\$350	\$280	\$425	\$340
30	Curtis, Mallet-Prevost, Colt & Mosle	\$735	\$635	\$560	\$280	\$361	\$666	\$396	\$360	\$685	\$480
31	Davis Wright Tremaine	\$695	\$300	\$390	\$170	\$257	\$430	\$375	\$250	\$423	\$375
32	Day Pitney	\$650	\$350	\$525	\$210	\$306	\$472	\$374	\$310	\$465	\$375
33	Dickinson Wright	\$530	\$260	\$275	\$170						
34	Dickstein Shapiro Morin & Oshinsky	\$825	\$425	\$440	\$225	\$336	\$552	\$438	\$360	\$550	\$425
35	Dinsmore & Shohl	\$475	\$235	\$285	\$155	\$199	\$342	\$275	\$190	\$340	\$250
36	Dorsey & Whitney	\$750	\$220	\$470	\$145	\$274	\$463	\$375	\$260	\$463	\$365
37	Duane Morris	\$705	\$315	\$465	\$150	\$310	\$475	\$416	\$305	\$470	\$415
38	Dykema Gossett	\$625	\$245	\$390	\$185	\$272	\$403				
39	Edwards Angell Palmer & Dodge	\$700	\$350	\$450	\$170	\$293	\$515	\$407	\$280	\$513	\$400
40	Epstein Becker & Green	\$675	\$280	\$440	\$155	\$290	\$471	\$380	\$280	\$475	\$395
41	Fenwick & West	\$775	\$500	\$500	\$245	\$360	\$590	\$395	\$370	\$600	\$410
42	Foley & Lardner	\$855			\$185	\$387	\$550	\$476	\$375	\$550	\$475
43	Ford & Harrison	\$560	\$325	\$395	\$210						
44	Fowler White Boggs Banker	\$500	\$230	\$325	\$150	\$217	\$345	\$303	\$210	\$340	\$300
45	Fox Rothschild	\$595	\$240	\$440	\$190						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
46											
47	Frost Brown Todd	\$455	\$225	\$255	\$145	\$180	\$303	\$256	\$170	\$295	\$255
48	Gardere Wynne Sewell	\$715	\$350	\$425	\$220	\$292	\$472	\$405	\$265	\$475	\$405
49	GrayRobinson, PA	\$500	\$175	\$250	\$250	\$198	\$319	\$224			
50	Greenberg Traurig, PA	\$850	\$300	\$505	\$175	\$311	\$490	\$407	\$310	\$500	\$415
51	Harris Beach	\$475	\$250	\$275	\$140						
52	Hiscock & Barclay LLP	\$375	\$220	\$250	\$160	\$185	\$278	\$245	\$180	\$280	\$250
53	Hodgson Russ	\$645	\$215	\$395	\$155	\$219	\$337	\$254	\$205	\$350	\$250
54	Hogan & Hartson	\$850	\$300	\$525	\$150	\$385	\$600	\$490	\$370	\$590	
55	Holland & Hart	\$585	\$275	\$345	\$165	\$269	\$388	\$335	\$275	\$385	\$335
56	Holme Roberts & Owen	\$635	\$285	\$420	\$195	\$284	\$412	\$353	\$265	\$410	\$345
57	Howard, Rice, Nemerovski, Canady, Falk & Rabkin	\$775	\$495	\$485	\$275						
58	Hughes Hubbard & Reed	\$825	\$595	\$560	\$240						
59	Husch & Eppenberger	\$425	\$190	\$260	\$130	\$179	\$297	\$248	\$175	\$295	\$245
60	Jackson Lewis	\$575	\$235	\$450	\$210						
61	Jenner & Block LLP	\$900	\$450	\$425	\$275	\$327	\$562		\$325	\$525	
62	Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$600	\$210	\$225	\$150						
63	Kelley Drye & Warren	\$800	\$400	\$500	\$255						
64	Knobbe, Martens, Olson & Bear	\$645	\$340	\$420	\$215						
65	Lane Powell Moss & Miller	\$515	\$300	\$300	\$205	\$255	\$370	\$345	\$255	\$370	\$345
66	Lathrop & Gage	\$450	\$225	\$300	\$140	\$185	\$300	\$215	\$185	\$300	\$260
67	Leonard, Street and Deinard	\$500	\$300	\$300	\$185						
68	Lewis, Rice & Fingersh	\$425	\$240	\$295	\$130						
69	Lindquist & Vennum	\$500	\$260	\$260	\$165						
70	Locke, Lord, Bissell & Liddell	\$900	\$375	\$390	\$190	\$281	\$488	\$399	\$280	\$490	\$425
71	Loeb & Loeb	\$875	\$425	\$500	\$240	\$384	\$606	\$505	\$400	\$600	\$500
72	Lord, Bissell & Brook	\$690	\$335	\$410	\$200	\$299	\$473	\$410	\$300	\$475	\$415
73	Lowenstein Sandler	\$725	\$380	\$395	\$205						
74	Luce, Forward, Hamilton & Scripps	\$725	\$325	\$450	\$220	\$281	\$465	\$381	\$280	\$475	\$395
75	Manatt, Phelps & Phillips	\$785	\$520	\$480	\$265	\$395	\$600	\$518	\$415	\$590	\$550
76	Marshall, Dennehey, Warner, Coleman & Goggin	\$400	\$135	\$300	\$120						
77	McCarter & English LLP	\$650	\$325	\$395	\$205						
78	McElroy Deutsch, Mulvaney & Carpenter	\$450	\$295	\$225	\$135	\$180	\$250	\$195	\$165	\$235	\$215
79	McKee Nelson	\$920	\$635	\$595	\$375	\$446	\$760	\$489	\$455	\$755	\$475
80	Michael Best & Friedrich	\$550	\$225	\$300	\$185	\$234	\$363	\$321	\$235	\$350	\$325
81	Miles & Stockbridge	\$535	\$315	\$405	\$205	\$260	\$397				
82	Miller & Martin	\$580	\$230	\$295	\$160	\$201	\$338	\$306	\$195	\$340	\$320
83	Miller, Canfield, Paddock and Stone, PLC	\$595	\$265	\$340	\$160	\$225	\$400	\$285	\$220	\$400	\$335
84	Montgomery, McCracken, Walker & Rhoads	\$575	\$320	\$320	\$195	\$260	\$419	\$360			
85	Moore & Van Allen	\$765	\$265	\$330	\$175						
86	Morgan, Lewis & Bockius	\$850	\$375	\$575	\$200						
87	Morris, Manning & Martin	\$625	\$350	\$400	\$180	\$285	\$436	\$380	\$310	\$395	\$440
88	Nexsen Pruet Jacobs & Pollard	\$420	\$220	\$250	\$150						
89	Ogletree, Deakins, Nash, Smoak & Stewart	\$575	\$270	\$360	\$200	\$256	\$348	\$312			
90	Patton Boggs	\$920	\$320	\$520	\$205	\$375	\$536	\$456	\$385	\$525	\$455
91	Pepper Hamilton	\$750	\$335	\$425	\$200						
92	Perkins Coie	\$805	\$205	\$500	\$145						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
93											
94	Phelps Dunbar	\$450	\$170	\$205	\$130	\$174	\$243	\$184	\$175		
95	Phillips Lytle	\$435	\$245	\$300	\$140	\$205	\$309	\$223	\$205	\$300	\$215
96	Polsinelli Shalton Welte Suelthaus	\$600	\$250	\$250	\$175						
97	Quarles & Brady	\$575	\$260	\$335	\$185	\$233	\$377	\$319	\$235	\$375	\$325
98	Reed Smith	\$825	\$350	\$510	\$200	\$374	\$558	\$395	\$350	\$525	\$385
99	Robinson & Cole	\$575	\$340	\$325	\$200	\$295	\$424	\$328	\$280	\$420	\$330
100	Roetzel & Andress	\$460	\$210	\$275	\$110	\$198	\$302	\$264	\$200	\$300	\$260
101	Rutan & Tucker	\$600	\$335	\$350	\$210						
102	Saul Ewing	\$750	\$315	\$485	\$180	\$273	\$426	\$357	\$255	\$415	\$365
103	Schnader Harrison Segal & Lewis	\$750	\$240	\$385	\$175						
104	Schulte Roth & Zabel	\$850	\$650	\$585	\$235	\$435	\$724		\$440	\$745	
105	Sheppard, Mullin, Richter & Hampton	\$795	\$425	\$550	\$260						
106	Shughart Thomson & Kilroy	\$475	\$235	\$225	\$160						
107	Shumaker, Loop & Kendrick	\$465	\$200	\$360	\$180	\$221	\$311	\$289	\$220	\$305	\$300
108	Sills Cummis Epstein & Gross	\$650	\$350	\$375	\$195						
109	Smith, Gambrell & Russell	\$575	\$250	\$345	\$175						
110	Snell & Wilmer	\$675	\$275	\$390	\$170	\$248	\$390				
111	Steptoe & Johnson PLLC	\$325	\$200	\$250	\$170						
112	Stinson Morrison Hecker	\$600	\$230	\$250	\$175	\$207	\$333	\$295	\$225	\$365	\$285
113	Stoel Rives	\$500	\$275	\$350	\$160	\$231	\$379	\$324	\$230	\$375	\$330
114	Strasburger & Price	\$560	\$225	\$395	\$200	\$234	\$367	\$326	\$223	\$363	\$322
115	Sullivan & Worcester	\$700	\$415	\$420	\$245	\$309	\$550	\$438	\$290	\$540	\$440
116	Sutherland Asbill & Brennan	\$715	\$375	\$415	\$215	\$292	\$511	\$335	\$280	\$500	\$305
117	Thacher Proffitt & Wood	\$785	\$525	\$495	\$275	\$353	\$674	\$428	\$365	\$700	\$395
118	Thompson & Knight	\$730	\$370	\$370	\$205	\$295	\$496	\$415	\$310	\$485	\$400
119	Thompson Coburn	\$580	\$265	\$370	\$170						
120	Ulmer & Berne	\$470	\$240	\$290	\$165	\$212	\$343	\$280			
121	Vedder, Price, Kaufman & Kammholz	\$650	\$335	\$410	\$205	\$281	\$430	\$372	\$370	\$425	\$365
122	Wiggin and Dana	\$590	\$295	\$350	\$195						
123	Williams Mullen	\$600	\$300	\$425	\$205						
124	Wilmer Cutler Pickering Hale and Dorr	\$1,000	\$475	\$495	\$215						
125	Winstead Sechrest & Minick	\$620	\$345	\$360	\$180						
126	Winston & Strawn	\$845	\$400	\$590	\$200	\$365	\$608	\$455	\$395	\$640	\$523
127	Womble Carlyle Sandridge & Rice	\$575	\$290	\$370	\$195	\$268	\$426	\$355	\$265	\$425	\$360

EXHIBIT "3"

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>

BUSINESS | LAW

Legal Fees Cross New Mark: \$1,500 an Hour

Billing rates for partners at elite corporate law firms keep rising, despite low inflation, weak demand



Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at the mounting hourly fees of law partners at elite corporate law firms. Above, the U.S. Bankruptcy Court in New York. *PHOTO: BRENDAN MCDERMID/REUTERS*

By **SARA RANDAZZO** and **JACQUELINE PALANK**

Updated Feb. 9, 2016 10:11 a.m. ET

The day of the \$1,500-an-hour lawyer has arrived.

Partners at some of the nation's top law firms are approaching—and, in a few cases, surpassing—that watershed billing rate, making the \$1,000-an-hour legal fees that once seemed so steep look quaint by comparison.

Despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn, according to Citi Private Bank's Law Firm Group.

“We just raise them every year,” said John Altorelli, a finance lawyer at DLA Piper LLP in New York, who says the firm has set his rate at more than \$1,500 an hour. Mr. Altorelli, who filed for personal bankruptcy in 2014 to halt a legal battle with the estate of his former law firm, Dewey & LeBoeuf LLP, cracked the \$1,000-an-hour mark a decade ago. His fees have risen steadily ever since.

To soften the blow to clients, Mr. Altorelli does more than half his work on some kind of fixed-fee basis. “Using hourly rates is really anachronistic, but we still do it,” he said.

Raising rates ensures that law firms keep up with the competition and helps them wrest more money from clients, who routinely demand discounts for all but the most sensitive work.

“If you think of the rules of supply and demand, how in the world can they keep raising their rates?” said Jeff Carr, a former general counsel of oil-and-gas services and equipment company FMC Technologies who for years has been an outspoken opponent of hourly legal rates.

The rate creep has boosted law firms’ revenue at a time when many of them are under pressure from lower-cost legal-service providers and corporate clients that are keeping more legal work in-house. Revenue at law firms rose 4% last year, according to Wells Fargo Private Bank’s Legal Specialty Group, though demand rose just 0.5%.

“Lots of law firms will charge whatever the market can bear,” said the head of one of the nation’s 200 largest law firms.

Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at mounting fees. These court filings show the rates of partners specializing in corporate restructuring, as well as those with specialties like tax, litigation and corporate law.

A review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.

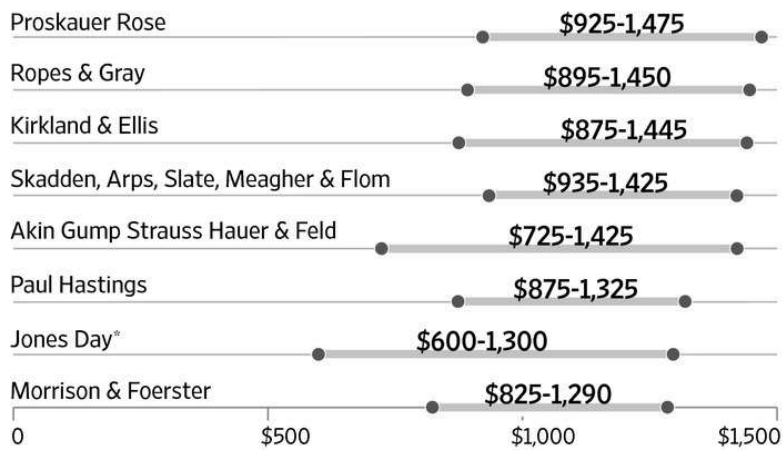
Proskauer Rose LLP’s hourly partner billing rate has climbed as high as \$1,475, while Ropes & Gray LLP’s tops out at \$1,450, court papers show.

Kirkland & Ellis LLP’s top hourly billing rate is now \$1,445. And rates at two firms—Akin Gump Strauss Hauer & Feld LLP and Skadden, Arps, Slate, Meagher & Flom LLP—peak at \$1,425 an hour.

Representatives of the law firms declined to comment.

Top Billers

Hourly rates of partners at top U.S. law firms now approach \$1,500.



*Includes partners and of counsel

Source: Bankruptcy court filings

THE WALL STREET JOURNAL.

Martin Bienenstock, who leads Proskauer's restructuring practice, called the \$1,225 an hour he billed clients last year "a market rate similar to my peers at other firms," and said he charges the same rate for nonbankruptcy work.

"The clients have kept coming back and growing during my 38-year career," he

said in an email, adding that clients generally prefer dealing directly with senior lawyers versus younger associates with lower rates.

In disclosing their firmwide rate increases, many firms tell the courts it is a standard way of keeping pace with "economic and other conditions." These include rising fixed costs, such as real estate and salaries.

In theory, a law-firm partner's pay rises and falls with the success of the firm. But, as competition for top talent increases, many firms feel the need to guarantee salaries or ensure a partner's pay doesn't fall, even in down years.

Still, only elite lawyers can charge \$1,400 an hour or more. Such rates are found almost exclusively in New York and other major markets, and only in the least price-sensitive fields like mergers and acquisitions, restructuring, tax, antitrust and high-stakes litigation and appeals.

For lawyers at the very top of those fields, hourly rates can hit \$1,800 or even \$1,950.

"You have a very few people at the very top where price is almost no object," said legal consultant Bruce MacEwen, who likens it to the way celebrities, sports stars and best-selling authors are paid. "It is a talent market."

Most lawyers in the U.S. fall well below those high marks. In a survey of in-house legal departments by BTI Consulting Group, the average highest rate paid for

law-firm partners was \$875 an hour in 2015, up more than 27% from three years earlier. Of the respondents, 38% had paid more than \$1,000 an hour for a lawyer, and the highest rate those in the survey paid was \$1,600 an hour.

For many firms, the stated rate is simply a starting point in discussions with corporate law departments. As a result, said legal consultant Ward Bower of Altman Weil, “sophisticated” law firms tend to implement annual rate increases to offset clients’ requests for discounts.

Such discounts are becoming more commonplace. A decade ago, law firms could typically get clients to pay around 92% of their stated rates, according to Thomson Reuters Peer Monitor. Last year, that fell to less than 83%.

Smaller companies can get squeezed the most on fees, because they don’t send enough work to any one law firm to get the best deals.

Companies with \$4 billion or more in annual revenue were twice as likely as those with less than \$100 million in revenue to use some form of alternative fee, according to a survey from industry trade group the Association of Corporate Counsel.

Some industry watchers view the raise-and-discount approach with skepticism.

“If clients are pushing back on rates, the answer isn’t to raise them” and then ask for a discount, Mr. MacEwen said. “The answer is to provide better total value.”

Write to Sara Randazzo at sara.randazzo@wsj.com and Jacqueline Palank at jacqueline.palank@wsj.com

EXHIBIT "4"

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT "5"



Merritt Hospitality adv. Nunez, Maria Sandoval

Maria Sandoval

██████████. ██████████

\$ Historic Cost

\$13,955.77

Court Cost

\$150.00

Created: 1/7/2022 at 10:08 AM

Trialworks TaskCode

costs

Date Incurred

1/7/2022

Payee

Case Anywhere

Description

CAINV#242084 MH 1.7.22

Docs

 CAINV#242084 MH 1.7.22.pdf

Court Cost

\$120.00

Created: 12/29/2021 at 10:46 AM

Trialworks TaskCode

Costs

Date Incurred

12/29/2021

Payee

Case Anywhere

Description

CAINV#233834 Merritt

Docs

 CAINV#233834 Merritt.pdf

Filing Fee

\$67.69

Created: 12/16/2021 at 11:57 AM

Trialworks TaskCode

Filing Fee

Date Incurred

12/1/2021



Payee

One Legal

Description

OLINV#03698431 MH 12.1.21

Docs OLINV#03698431 MH 12.1.21.pdf**Filing Fee**

\$18.74

*Created: 12/16/2021 at 9:01 AM***Trialworks TaskCode**

Filing Fee

Date Incurred

11/30/2021

Payee

One Legal

Description

OLINV#03694494 MH 11.30.21

Docs OLINV#03694494 MH 11.30.21.pdf**Court Cost**

\$15.00

*Created: 2/16/2022 at 12:34 PM***Trialworks TaskCode**

costs

Date Incurred

11/23/2021

Payee

VCourt

Description

VCourt

Notes

HD: 11/23/21

Docs Merritt Hospitality 11.23.21 - VCourt™ by streamWrite.pdf**Filing Fee**

\$72.58

*Created: 11/18/2021 at 11:30 AM***Trialworks TaskCode**

Filing Fee

Date Incurred

10/27/2021

Payee

One Legal

Description

OLINV#03627906 MH 10.27.21



Docs OLINV#03627906 MH 10.27.21.pdf**Filing Fee**

\$18.74

Created: 11/18/2021 at 11:08 AM

Trialworks TaskCode

Filing Fee

Date Incurred

10/27/2021

Payee

One Legal

Description

OLINV#03627066 MH 10.27.21

Docs OLINV#03627066 MH 10.27.21.pdf**Court Cost**

\$120.00

Created: 10/7/2021 at 11:13 AM

Trialworks TaskCode

Costs

Date Incurred

10/7/2021

Payee

Case Anywhere

Description

CAINV#233834 Merritt 10.7.21

Docs CAINV#233834 Merritt 10.7.21.pdf**Court Cost**

\$15.00

Created: 8/10/2021 at 3:41 PM

Trialworks TaskCode

Costs

Date Incurred

8/5/2021

Payee

LA Connect

Description

Remote Appearance Payment Receipt Merritt 8.5.21

Notes

HD: 6/29/21

Docs Remote Appearance Payment Receipt Merritt 8.5.21.pdf

Court Cost

\$120.00

Created: 7/20/2021 at 11:25 AM

Trialworks TaskCode

Costs

Date Incurred

7/20/2021

Payee

Case Anywhere

Description

CAINV#225448 Merritt

Docs

 CAINV#225448 Merritt.pdf

Filing Fee

\$66.00

Created: 5/18/2021 at 12:51 PM

Trialworks TaskCode

Costs

Date Incurred

5/18/2021

Payee

OnCall

Description

OCINV#199336Z Merritt paid 5.18.21

Docs

 OCV#199336Z Merritt paid 5.18.21.pdf

Court Cost

\$156.00

Created: 4/7/2021 at 1:54 PM

Trialworks TaskCode

Case Anywhere

Date Incurred

4/7/2021

Payee

Case Anywhere

Description

CAINV#217112 Merritt 4.7.21

Docs

 CAINV#217112 Merritt 4.7.21.pdf

Filing Fee

\$209.45

Created: 4/6/2021 at 2:54 PM



Trialworks TaskCode

On Call Filing

Date Incurred

3/17/2021

Payee

OnCall

Description

OCINV#199336 Merritt 3.17.21

Docs OCINV#199336 Merritt 3.17.21.pdf

Filing Fee

\$120.95

Created: 3/9/2021 at 1:08 PM

Trialworks TaskCode

On Call Filing

Date Incurred

3/3/2021

Payee

OnCall

Description

OCINV#197540 Merritt 3.3.21

Docs OCINV#197540 Merritt 3.3.21.pdf

Research Cost

\$425.00

Created: 3/30/2021 at 1:57 PM

Trialworks TaskCode

Thomson Reuters Research

Date Incurred

2/26/2021

Payee

Thomson Reuters

Description

billing period of 2/1/21-2/28/21

Court Cost

\$25.95

Created: 2/23/2021 at 2:45 PM

Trialworks TaskCode

On Call Filing

Date Incurred

2/18/2021

Payee

OnCall

Description

OCINV#194881Z Merritt - paid 2.18.21

Docs OCINV#194881Z Merritt - paid 2.18.21.pdf

Filing Fee

\$143.95

Created: 2/9/2021 at 1:29 PM

Trialworks TaskCode

On Call Filing

Date Incurred

2/1/2021

Payee

OnCall

Description

OCINV#194881 Merritt 2.1.21

Docs OCINV#194881 Merritt 2.1.21.pdf

Court Cost

\$126.00

Created: 1/12/2021 at 1:39 PM

Trialworks TaskCode

Case Anywhere

Date Incurred

1/12/2021

Payee

Case Anywhere

Description

CAINV#208899 MH 1.12.21

Docs CAINV#208899 MH 1.12.21.pdf

Filing Fee

\$89.20

Created: 1/7/2021 at 11:38 AM

Trialworks TaskCode

On Call Filing

Date Incurred

12/17/2020

Payee

OnCall

Description

OCINV#187987 Merritt paid 12.17.20

Docs OCVINV#187987 Merritt paid 12.17.20.pdf

Research Cost

\$1,830.00

Created: 11/18/2020 at 1:28 PM

**Trialworks TaskCode**

Research

Date Incurred

11/18/2020

Payee

Telswitch Inc.

Description

Telswitch INV Re Merritt - paid 11.18.20 (2011100493)

Docs Telswitch INV Re Merritt - paid 11.18.20 (2011100493).pdf

\$100.80

Trialworks TaskCode

COSTS

Date Incurred

10/8/2020

Payee

Case Anywhere

Description

CAINV#201007 Merritt 10.8.20

\$112.45

Trialworks TaskCode

Filing Fee

Date Incurred

7/20/2020

Payee

On-call

Description

OCINV#169907 Merritt (paid 7.20.20) paid w/CC

\$126.35

Trialworks TaskCode

Filing Fee

Date Incurred

6/30/2020

Payee

On Call

Description

OCINV#166879 Merritt (paid 6.30.20) paid w/CC

\$51.45

Trialworks TaskCode

Filing Fee

Date Incurred

6/19/2020

Payee

On Call

Description

OCINV#166081 Merritt (6.19.20) paid w/CC



\$86.45

Trialworks TaskCode

Filing Fee

Payee

On Call

Date Incurred

6/19/2020

Description

OCINV#166626 Merritt (6.19.20) paid w/CC

\$89.60

Trialworks TaskCode

Filing Fee

Payee

On Call

Date Incurred

6/3/2020

Description

OCINV#165400 Merritt (6.3.20) paid w/CC

\$7,500.00

Trialworks TaskCode

COSTS

Payee

First Mediation

Date Incurred

6/1/2020

Description

paid w/CC

\$116.60

Trialworks TaskCode

Filing Fee

Payee

One Call

Date Incurred

5/15/2020

Description

OCINV#164734 Merritt (5.15.20) paid WCC

\$88.60

Trialworks TaskCode

Filing Fee

Date Incurred

5/15/2020



Payee
On Call

Description
OCINV#164029 Merritt (5.15.20) paid wCC

\$2.40

Trialworks TaskCode
COSTS

Payee
Postage

Date Incurred
5/14/2020

Description
May 2020

\$3.60

Trialworks TaskCode
research

Payee
Thomson Reuters

Date Incurred
4/1/2020

Description
billing period of 2/1/20-2/29/20

\$168.50

Trialworks TaskCode
COSTS

Payee
On-call

Date Incurred
3/19/2020

Description
OCINV#159792 Merritt (3.13.20)

\$1,495.50

Trialworks TaskCode
Filing Fee

Payee
On-call

Date Incurred
3/10/2020

Description
OCINV#157589 Merritt (3.10.20)

\$14.36



Trialworks TaskCode research	Payee Thomson Reuters
Date Incurred 2/27/2020	Description billing period of: 1/1/20-1/31/20

\$6.90	
Trialworks TaskCode postage	Payee Postage
Date Incurred 2/27/2020	Description February Postage

\$75.00	
Trialworks TaskCode Filing Fee	Payee Labor and Work Force Development Agency
Date Incurred 2/24/2020	Description LWDA PAGA filing fee Re Nunez v. Merritt Hosp.

Postage Cost		\$6.96
Created: 7/1/2021 at 1:07 PM		
Trialworks TaskCode July Postage		



EXHIBIT "6"



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 "7"

(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 May 4, 2022, 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 FINAL APPROVAL OF CLASS SETTLEMENT AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS** 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

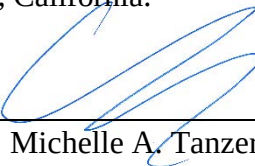
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware 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/315>) 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 May 4, 2022, at Encino, California.



Michelle A. Tanzer