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10 individually and on behalf of all others similarly situated

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16 Attorneys for Defendants  
17 AH 2005 Management, L.P., Pillar Hotels and Resorts LLC  
18 (f/k/a Pillar Hotels and Resorts, LP) and AH 2005 Management Gen-  
19 Par, LLC

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **FOR THE COUNTY OF ALAMEDA**

22 MARIA PONCE individually and on behalf  
23 of all others similarly situated,

24 Plaintiff,

25 vs.

26 AH 2005 MANAGEMENT, L.P.; PILLAR  
27 HOTELS AND RESORTS, LLC (f/k/a  
28 Pillar Hotel and Resorts, LP); PILLAR  
HOTELS AND RESORTS GEN-PAR,  
LLC (f/k/a Pillar Hotel and Resorts, LP);  
and DOES 1-20, inclusive,

Defendants.

Case No. RG18890254

*Assigned for all purposes to:  
Hon. Winifred Y. Smith, Dept. 21*

**JOINT STIPULATION OF  
CLASS ACTION AND REPRESENTATIVE  
ACTION SETTLEMENT**

1 This Joint Stipulation of Class Action and Representative Action Settlement (“Agreement”  
2 of the Action (defined below) is made by and between Plaintiff Maria Ponce (“Plaintiff” or “Class  
3 Representative”), on behalf of herself and all others similarly situated, and as a proxy/agent for the  
4 State of California and the California Labor Workforce Development Agency (“LWDA”) to the  
5 extent permitted by law, on the one hand; and Defendants AH 2005 Management, L.P., Pillar Hotels  
6 and Resorts, LLC, and AH 2005 Management Gen-Par, LLC (collectively, “Defendants”), on the  
7 other hand, after Plaintiff and Defendants engaged in informal discovery, participated in a full day  
8 of mediation, and negotiated this Agreement at arms-length. Plaintiff and Defendants are referred to  
9 in this Agreement collectively as the “Parties,” or individually as a “Party.” Capitalized terms used  
10 herein shall have the meanings set forth in Article I or as defined elsewhere in this Agreement.

11 For the consideration set forth herein, including, but not limited to, a release of claims by  
12 Class Members and PAGA Employees and a general release of claims by Plaintiff, Defendants agree  
13 to pay the gross settlement amount of One Million Nine Hundred Twenty-Five Thousand Dollars  
14 and Zero Cents (\$1,925,000.00) (the “Gross Settlement Amount”) (or other increased amount on pro  
15 rata basis as set forth in Section 3.07(a), below), upon final approval of this Settlement and within  
16 the time periods set forth herein.

17 Now, therefore, it is stipulated and agreed by and among the undersigned Parties, subject to  
18 the approval of the Court pursuant to the California Rules of Court, that the Settlement of the Action  
19 shall be effectuated subject to the following terms and conditions.

20 **ARTICLE I**

21 **DEFINITIONS**

22 Unless otherwise defined herein, the following terms used in this Agreement shall have the  
23 meanings ascribed to them as set forth below:

24 a. “Action” means the action described as follows: “*Maria Ponce v. AH 2005*  
25 *Management, L.P.; Pillar Hotels and Resorts, LLC (f/k/a Pillar Hotels and Resorts, LP); AH 2005*  
26 *Management Gen-Par, LLC,”* Case No. RG18890254, filed in the Superior Court of the State of  
27 California for the County of Alameda, and Case No. RG17882176 also filed in the Superior Court  
28 of the State of California for the County of Alameda but removed on December 18, 2017 in Case

3:17-cv-07183-EDL in the Northern District of California.

b. “Agreement” means this Joint Stipulation of Class Action and Representative Action Settlement, including any attached Exhibit(s).

c. “Check-Cashing Period” means the period of 180 days after the date of the checks for Individual Class Member Settlement Payments.

d. “Class” or “the Class” means all current and former non-exempt employees who do not timely opt out/request exclusion and are and/or were employed by Defendant in California at any time during the Class Period.

e. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

AEGIS LAW FIRM, PC  
Kashif Haque  
Samuel A. Wong  
Jessica L. Campbell  
Fawn F. Bekam  
9811 Irvine Center Drive, Suite 100  
Irvine, California 92618  
Telephone: (949) 379-6250  
Facsimile: (949) 379-6251

f. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s and/or PAGA Employee’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, and the number of Qualifying Workweeks worked during the Class Period and/or PAGA Release Period.

g. “Class Members” means all members of the Class. Defendant estimates there are 2,749 Class Members.

h. “Class Member Released Claims” is defined in Section 4.01, below.

i. “Class Period” means November 13, 2013, through the date the Court issues its order of preliminary approval of the settlement, or ninety (90) days after January 1, 2020, whichever is sooner.

j. “Class Representative” means Maria Ponce.

k. “Court” means the Alameda County Superior Court, where case number

1 RG18890254 is currently pending.<sup>1</sup>

2 l. “Date of Finality” means the later of the following: (1) if no appeal is taken of the  
3 Final Order, sixty-five (65) days after the Final Order; or (2) if an appeal is taken from the Court’s  
4 overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an  
5 appellate decision affirming the Final Order becomes final and no further appeals are possible.

6 m. “Defendants” means Defendants AH 2005 Management, L.P., Pillar Hotels and  
7 Resorts, LLC, and AH 2005 Management Gen-Par, LLC.

8 n. “Defense Counsel” means counsel for Defendant, who are:

9 Linda Claxton  
10 Michael D. Thomas  
11 OGLETREE, DEAKINS, NASH, SMOAK  
& STEWART, P.C.  
12 400 South Hope Street, Suite 1200  
13 Los Angeles, CA 90071

14 o. “Disposition” means the method by which the Court approves the terms of the  
15 Settlement and retains jurisdiction over its enforcement, implementation, construction,  
16 administration, and interpretation.

17 p. “Enhancement Payments” means a monetary award, paid pursuant to Section 3.07(e)  
18 of this Agreement and subject to Court approval, of up to Ten Thousand Dollars and Zero Cents  
19 (\$10,000.00) for Plaintiff Maria Ponce in addition to her payment as a Class Member and PAGA  
20 Employee.

21 q. “Final Fairness and Approval Hearing” means the hearing to be conducted by the  
22 Court to determine whether to approve finally and implement the Settlement pursuant to the terms  
23 of this Agreement.

24 r. “Final Order Approving Settlement of Class Action and Representative Action” or  
25 “Final Order” means the final formal court order signed by the Court following the Final Fairness  
26 and Approval Hearing in accordance with the terms herein, approving this Agreement.

27 s. “Gross Settlement Amount” means One Million Nine Hundred Twenty-Five

28 <sup>1</sup> The Parties have agreed to a global settlement in Alameda Superior Court of both matters  
pending in state court and in federal court.

1 Thousand Dollars and Zero Cents (\$1,925,000.00), unless increased on a pro rata basis pursuant to  
2 Section 3.07(a), below, to be paid by Defendants upon final approval of the Settlement. All payments  
3 to Participating Class Members, the PAGA Allocation, Settlement Administration Costs, attorneys'  
4 fees and costs, and Plaintiff's Enhancement Payments shall be paid out of the Gross Settlement  
5 Amount. Defendants will be responsible for the employer's share of payroll taxes separately and in  
6 addition to the Gross Settlement Amount based on the allocation of the Individual Class Member  
7 Settlement Payments as follows: ten percent (10%) of the Net Settlement Amount, defined below,  
8 allocated to wages; sixty percent (60%) of the Net Settlement Amount allocated to penalties; and  
9 thirty percent (30%) of the Net Settlement Amount allocated to interest. No part of the Gross  
10 Settlement Amount shall revert to Defendants.

11 t. "Individual Class Member Settlement Payment" means each Participating Class  
12 Member's respective share of the Net Settlement Amount. Individual Class Member Settlement  
13 Payments will be determined by the calculations provided in Section 3.07(f) of this this Agreement.

14 u. "LWDA" means the California Labor and Workforce Development Agency.

15 v. "Motion for Final Approval" means Plaintiff's submission of a written motion,  
16 including any evidence as may be required for the Court to conduct an inquiry into the fairness of  
17 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and  
18 to enter a Final Order in this Action.

19 w. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,  
20 including any evidence as may be required for the Court to grant preliminary approval of the  
21 Settlement as required by Rule 3.769 of the California Rules of Court.

22 x. "Net Settlement Amount" means the Gross Settlement Amount less the Individual  
23 Settlers Credit, the amount allocated to Settlement Administration Costs, the PAGA Allocation,  
24 attorneys' fees and costs, and Enhancement Payments.

25 y. "Non-Participating Class Member" means a Class Member who submits to the  
26 Settlement Administrator a valid and timely written Request for Exclusion.

27 z. "Notice of Class Action Settlement" means a notice in a form substantially similar to  
28 **Exhibit A**, attached hereto and subject to Court approval, which will be sent to Class Members in

1 both English and Spanish notifying them of the Settlement and advising of their rights. The Notice  
2 of Class Action Settlement will include, without limitation, instructions for participating, objecting,  
3 opting out, and disputing calculations of the Individual Class Member Settlement Payment;  
4 estimates of likely recovery by the Class Member; clear indication that the Court has determined  
5 only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate,  
6 and reasonable, and that any final determination of those issues will be made at the Final Fairness  
7 and Approval Hearing; the date, time, and location of the Final Fairness and Approval Hearing; and  
8 advise Class Members of how they can obtain a copy of the Settlement Agreement.

9 aa. “Notice Packet” means, collectively, the Notice of Class Action Settlement.

10 bb. “Operative Complaint” means the operative pleading filed in the above-captioned  
11 action.

12 cc. “PAGA” means the California Private Attorneys General Act of 2004, which is  
13 codified in California Labor Code §§ 2698, *et seq.*

14 dd. “PAGA Allocation” refers to the penalty payments under PAGA to the PAGA Group  
15 pursuant to Section 3.07(d) of this Agreement.

16 ee. “PAGA Employees” means all current and former non-exempt employees who are  
17 and/or were employed by Defendant in California at any time during the PAGA Period. Defendants  
18 estimates that there are 1,545 PAGA Employees.

19 ff. “PAGA Group” means PAGA Employees and the LWDA.

20 gg. “PAGA Period” means November 13, 2016, through the date the Court issues its  
21 order of preliminary approval of the settlement, or ninety (90) days after January 1, 2020, whichever  
22 is sooner.

23 hh. “PAGA Released Claims” is defined in Section 4.02, below.

24 ii. “Participating Class Member” means a Class Member who does not timely exclude  
25 himself or herself from the Settlement and will therefore receive his or her share of the settlement  
26 proceeds automatically without the need to return a claim form.

27 jj. “Party” or “Parties” respectively means Plaintiff or Defendants, individually, or  
28 Plaintiff and Defendants, collectively.

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kk. “Plaintiff” means Plaintiff Maria Ponce.

ll. “Preliminary Approval Date” means the date the Court preliminarily approves the Settlement in accordance with the terms of this Agreement.

mm. “Pro Rata Increase in the Gross Settlement Amount” is defined in Section 3.07(a).

nn. “Qualifying Workweeks” means the number of weeks that Class Members and/or PAGA Employees worked for Defendant as non-exempt employees in California during the Class Period or the PAGA Period.

oo. “Released Parties” is defined in Section 4.01, below.

pp. “Releasing Parties” is defined in Section 4.01, below.

qq. “Request for Exclusion” means a written request made by a Class Member to “opt-out” or “exclude” oneself from the Settlement Class. In order to be considered valid, Requests for Exclusion must: (1) contain the name, address, and telephone number of the Class Member requesting to “opt out” or be excluded from the Settlement Class; (2) state the Class Member’s intent to opt out or be excluded from the Settlement, (3) be returned by mail to the Settlement Administrator at the specified address; and, (4) be postmarked on or before the Objection/Exclusion Deadline.

rr. “Settlement” means the final resolution and disposition of the Action pursuant to this Agreement.

ss. “Settlement Administration Costs” means all costs (not to exceed \$20,500.00) incurred by the Settlement Administrator in administering the Settlement, including, but not limited to: all costs, expenses, and fees associated with the following: engaging in the duties set out in Section 3.02 of this Settlement; preparing, issuing, and mailing any and all notices; computing, processing, reviewing, and mailing Individual Class Member Settlement Payments and PAGA Allocation payments; generating Individual Class Member Settlement Payments and PAGA Allocation checks and related tax reporting forms; preparing any tax returns and other filings required by any governmental authority or agency; preparing any other checks, notices, reports, or filings; administering the process set forth in this Agreement regarding unclaimed checks; administering disbursements from the Net Settlement Amount; generating checks to Class Counsel for attorneys’ fees and costs and to Plaintiffs for the Enhancement Payments; and engaging in any

1 other activity in furtherance of this Settlement that may be agreed to between the Parties or ordered  
2 by the Court.

3 tt. “Settlement Administrator” means Phoenix Settlement Administrators, who will be  
4 responsible for the administration of the Individual Class Member Settlement Payments, PAGA  
5 Allocation and other reasonably related and required matters pursuant to the terms of this  
6 Agreement.

7 **ARTICLE II**

8 **CONTINGENT NATURE OF THE AGREEMENT**

9 **Section 2.01: Stipulation to Class Certification for Settlement Purposes**

10 The Parties agree that the Action will be stayed until the request for preliminary and final  
11 approval of the Settlement is either granted or denied. Because the Parties have stipulated to the  
12 certification of the Class with respect to all causes of action alleged in the Operative Complaint for  
13 settlement purposes only, this Agreement requires preliminary and final approval by the Court.  
14 Defendant does not consent to certification of the Class for any purpose other than to effectuate the  
15 Settlement of the Action. Accordingly, the Parties enter into this Agreement on a conditional basis.  
16 This Agreement is contingent upon the approval and certification by the Court.

17 **Section 2.02: Continued Best Efforts To Obtain Court Approval of Settlement**

18 The Parties and their respective counsel shall take all steps that may be requested by the  
19 Court relating to the approval and implementation of the Settlement in accordance with the terms of  
20 this Agreement and shall use their respective commercially reasonable efforts in good faith to obtain  
21 Court approval and to implement this Agreement. If the Court does not grant the Motion for  
22 Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and confer to  
23 address the Court’s concerns. If the Parties are unable to agree upon a resolution, the Parties agree  
24 to seek the assistance of mediator Hon. Carl West (Ret.), of JAMS, to resolve the dispute.

25 **Section 2.03: Effect of Non-Occurrence of Date of Finality**

26 If the Date of Finality does not occur, the Parties agree as follows:  
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- 1 (a) Any conditional certification of the Class will be vacated and Plaintiff,  
2 Defendants, and the Class will be returned to their positions with respect to  
3 the Action as if this Agreement had not been entered into.
- 4 (b) Any amended complaint filed for purposes of a global settlement will be  
5 vacated and the Parties will return to litigating the claims in the pleadings  
6 filed prior to this Agreement.
- 7 (c) Any orders of the Court preliminarily or finally approving certification of any  
8 class contemplated by this Agreement shall be null, void, and vacated, and  
9 shall not be used or cited thereafter by any person or entity.
- 10 (d) The fact that the Parties were willing to stipulate for the purposes of this  
11 Agreement shall have no bearing on, nor be admissible in connection with,  
12 the issue of certification of the Class with respect to any cause of action  
13 alleged in the Action.
- 14 (e) The fact of the settlement terms reflected in this Agreement and the fact that  
15 Defendants did not oppose the certification of a Class under this Agreement  
16 or that the Court preliminarily approved the certification of the Class shall not  
17 be used or cited thereafter by any person or entity in any manner whatsoever,  
18 including without limitation any contested proceeding relating to the  
19 certification of any class.
- 20 (f) This Agreement shall be deemed null and void, shall be of no force or effect  
21 whatsoever, and shall not be referred to or used for any purpose whatsoever.  
22 Defendants expressly reserve the right to challenge the propriety of class  
23 certification in the Action for any purpose.

24 **ARTICLE III**

25 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

26 The procedure for obtaining Court approval of and implementing this Agreement shall be as  
27 follows:

28 **Section 3.01: Preliminary Approval and Conditional Class Certification**

1 As soon as practicable, Plaintiff will submit the Motion for Preliminary Approval along with  
2 this Agreement to the Court for preliminary approval pursuant to Rule 3.769 of the California Rules  
3 of Court. Plaintiff's Motion for Preliminary Approval will request the Court for an order  
4 conditionally certifying the Class. The Motion for Preliminary Approval will request a hearing date  
5 for the Final Fairness and Approval Hearing to be included in the Court's Order granting preliminary  
6 approval. Defendant will not oppose a Motion for Preliminary Approval which is consistent with  
7 this Agreement.

8 **Section 3.02: The Settlement Administrator**

9 **Settlement Administrator Duties, Generally**

10 The Parties have chosen Phoenix Settlement Administrators to administer the Settlement  
11 pursuant to this Agreement and to act as the Settlement Administrator. The Settlement Administrator  
12 shall perform all functions required under this Agreement, and take necessary steps to effectuate the  
13 Settlement, including, but not limited to, the following:

- 14 1. Preparing, translating, printing, distributing and responding to inquiries about the  
15 Notice Packet;
- 16 2. Ascertaining current address and addressee information for each Notice Packet  
17 returned as undeliverable and re-mailing the Notice Packet where appropriate as set  
18 forth in Section 3.03;
- 19 3. Promptly furnishing to counsel of the Parties any Requests for Exclusion (with all  
20 contact information redacted), objections or other written or electronic  
21 communications from Class Members which the Settlement Administrator receives,  
22 and keeping track of Requests for Exclusion including maintaining the original  
23 mailing envelope in which the Request was mailed;
- 24 4. Determining the validity of any Requests for Exclusion, calculating the Net  
25 Settlement Amount and the Individual Class Member Settlement Payments;
- 26 5. Receiving and holding the Gross Settlement Amount in accordance with this  
27 Agreement, and issuing the Individual Class Member Settlement Payment checks and  
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1 distributing them to Participating Class Members in accordance with the terms of this  
2 Agreement;

3 6. Issuing payment to the LWDA for the allocation of the Gross Settlement Amount for  
4 civil penalties pursuant to PAGA;

5 7. Calculating and issuing payment of each PAGA Employee's share of the PAGA  
6 Allocation to PAGA Employees for civil penalties pursuant to PAGA;

7 8. Issuing payment to Class Counsel for attorneys' fees and costs, to Plaintiffs for the  
8 Enhancement Payments, and to the appropriate taxing authorities for Defendant's  
9 share of payroll taxes, which will be paid by Defendant separately and in addition to  
10 the Gross Settlement Amount;

11 9. Providing Class Counsel an estimated average of the recovery by a Class Member,  
12 and the estimated high and low ranges of possible recoveries;

13 10. Performing all tax reporting duties required by federal, state or local law including  
14 the filing and distributing of all necessary tax returns and related forms (e.g., 1099s,  
15 W-2s, etc.);

16 11. Referring to Class Counsel all inquiries by Settlement Class Members regarding  
17 matters not within the Settlement Administrator's duties specified herein;

18 12. Apprising counsel for the Parties of the activities of the Settlement Administrator, in  
19 writing, by periodic reports. Additionally, the Settlement Administrator shall be  
20 reasonably available to respond to telephonic or electronic inquiries made by counsel  
21 for the Parties. Counsel for the Parties may each freely separately communicate with  
22 the Settlement Administrator;

23 13. Maintaining adequate records of its activities, including the dates of each mailing of  
24 Class Notices, returned mail and other communications and attempted written or  
25 electronic communications with Class Members;

26 14. Confirming in writing its completion of the administration of the settlement set forth  
27 in this Agreement;

- 1 15. Preparing a final report summarizing the number of Requests for Exclusion, disputes,  
2 and objections submitted;
- 3 16. Other duties described in this Agreement; and
- 4 17. Such other tasks as the Parties mutually agree or the Court may order.

5 **Section 3.03: Notice of Class Action Settlement to Class Members**

6 No later than ten (10) business days after the Preliminary Approval Date, Defendants will  
7 provide the Settlement Administrator with the Class List.

8 Within ten (10) business days of receiving the Class List from Defendants, the Settlement  
9 Administrator will send Class Members, by first-class mail, at their last known addresses, the Court  
10 approved Notice Packet, including notice of the Settlement and of the opportunity to opt out. The  
11 Notice Packet be in both English and in Spanish and will include a calculation of each Class  
12 Member's estimated share of the Net Settlement Amount. Class Members will have forty-five (45)  
13 days from the date of mailing of the Notice Packet in which to postmark written objections or submit  
14 a Request for Exclusion, should they choose to do so. Prior to the initial mailing, the Settlement  
15 Administrator will check all Class Member addresses against the National Change of Address  
16 database and shall update any addresses before mailing. Class Members shall not be required to  
17 submit claim forms in order to receive a proportional share of the Net Settlement Amount.

18 If a Notice Packet is returned with a forwarding address, the Settlement Administrator shall  
19 re-mail the Notice Packet to the forwarding address. With respect to each Class Member whose  
20 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement  
21 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or  
22 mass search on LexisNexis databases based on set criteria and, if another address is identified, shall  
23 mail the Notice Packet to the newly identified address. It is the intent of the Parties that reasonable  
24 means be used to locate Class Members and that the Settlement Administrator be given discretion  
25 to take steps in order to facilitate notice of the Settlement and delivery of the Individual Class  
26 Member Settlement Payments to the Participating Class Members.

27 If a Class Member's Notice Packet is re-mailed, the Class Member shall have fifteen (15)  
28 days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is

1 later, in which to postmark and mail written objections or Requests for Exclusion. If the Notice  
2 Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class  
3 Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly status report  
4 provided to the Parties.

5 In the event a Notice Packet remains undeliverable sixty (60) days after its initial mailing,  
6 the Settlement Administrator will not mail any such Class Member's Individual Class Member  
7 Settlement Payment. The Settlement Administrator will hold the Class Member's Individual Class  
8 Member Settlement Payment during the Check-Cashing Period on behalf of the Class Member. If,  
9 at the conclusion of the Check-Cashing Period, the Class Member's Notice Packet and Individual  
10 Class Member Settlement Payment remain undeliverable, the Settlement Administrator will send the  
11 funds from those checks to the State Controller's Unclaimed Property Fund with an identification of  
12 the amount of unclaimed funds attributable to each such Class Member.

13 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the  
14 Settlement Administrator shall provide Class Counsel and Defense Counsel with a declaration  
15 attesting to completion of the notice process, including any attempts to obtain valid mailing  
16 addresses for and re-sending of any returned Notice Packets, as well as the number of valid  
17 exclusions and objections that the Settlement Administrator received.

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19 ///

20 **Section 3.04: Responses to Notice of Class Action Settlement**

21 **a. Settlement Terms Bind All Class Members Who Do Not Submit a Timely**  
22 **and Valid Request for Exclusion**

23 Any Class Member who does not affirmatively opt out of the Settlement by submitting a  
24 timely and valid Request for Exclusion will be bound by all of its terms including those pertaining  
25 to the Released Claims, as well as any Final Order that may be entered by the Court if it grants final  
26 approval of the Settlement, whether or not such Class Member fails to cash his or her Individual  
27 Class Member Settlement Payment checks or the Settlement Administrator is unable to obtain a  
28 valid mailing address for such Class Member, provided that the Settlement Administrator has

1 materially complied with this Agreement with respect to such Class Member.

2 **b. Class Member Disputes**

3 If any Class Member disagrees with Defendants' records as to his or her Qualifying  
4 Workweeks worked during the Class Period as reflected in the Notice Packet, such disputes will be  
5 resolved prior to finalizing the Individual Class Member Settlement Payments, and each Individual  
6 Class Member Settlement Payment shall be adjusted accordingly. For the purpose of resolving  
7 disputed claims, Defendants' records regarding whether an individual should be a Class Member  
8 and the amount to be paid to the Class Member are presumed accurate. If an individual disputes  
9 Defendants' records, he or she has the burden of establishing with documents that he or she is a  
10 Class Member or that the calculation of his or her Qualifying Workweeks or Individual Class  
11 Member Settlement Payment is incorrect. The Notice Packet will provide a method for the Class  
12 Member to challenge the employment data on which his or her Individual Class Member Settlement  
13 Payment is based. The Settlement Administrator shall contact the Parties regarding the dispute and  
14 the Parties will work in good faith to resolve it. If a Class Member disagrees with the Parties'  
15 decision, he or she may raise it as an Objection to be decided by the Court. If the Parties are unable  
16 to resolve the dispute, the Court will be the final arbiter of the Qualifying Workweeks for each Class  
17 Member during the Class Period based on the information provided.

18 **c. Requests for Exclusion from Class Members**

19 Class Members may submit a request to be excluded from the Settlement as hereafter  
20 provided. In order for any Class Member to validly exclude himself or herself from the Class and  
21 this Settlement (*i.e.*, to validly opt out), the Class Member or his or her authorized representative  
22 must send a Request for Exclusion to the Settlement Administrator with the name, address, and  
23 telephone number of the Class Member requesting to "opt out" or be excluded from the Settlement  
24 Class, stating the Class Member's intent to opt out or be excluded from the Settlement, be  
25 postmarked by no later than forty-five (45) days after the date the Settlement Administrator initially  
26 mailed the Notice Packet to the Class Member (or fifteen (15) days after the Settlement  
27 Administrator re-mails the Notice Packet to the Class Member, whichever is later). The date of the  
28 initial mailing of the Notice Packet and the date the signed Request for Exclusion, if any, was

1 postmarked shall be conclusively determined according to the records of the Settlement  
2 Administrator. Any Class Member who timely and validly submits a Request for Exclusion will not  
3 be entitled to any Individual Class Member Settlement Payment, will not be bound by the terms and  
4 conditions of this Agreement or Settlement, and will not have any right to object, appeal, or comment  
5 on the Settlement.

6 Any Class Member who does not timely submit a valid Request for Exclusion shall be  
7 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are  
8 to be determined by the Court's Final Order Approving Settlement of Class Action and by the other  
9 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action  
10 that are released in this Agreement will be extinguished.

11 **d. Objections to Settlement**

12 Class Members may submit objections to the Settlement. In order for any Class Member to  
13 object to this Agreement, or any term of it, the person making the objection must not submit a  
14 Request for Exclusion (*i.e.*, must not opt out), and must send to the Settlement Administrator,  
15 postmarked no later than forty-five (45) days after the Notice Packet was initially mailed to the Class  
16 Member (or fifteen (15) days after the Settlement Administrator re-mails the Notice Packet to the  
17 Class Member, whichever is later), a written objection that specifies the ground(s) for the objection,  
18 signed by the objecting Class Member or his or her authorized representative, along with any  
19 supporting papers, provided, however, that the failure to submit such written objection and  
20 supporting papers shall not preclude the right of Class Members to object for the first time at the  
21 hearing. Class Members will have a right to appear at the Final Fairness and Approval Hearing in  
22 order to have their objections heard by the Court. The date of the initial mailing of the Notice Packet  
23 and the date the signed written objection was postmarked shall be conclusively determined according  
24 to the records of the Settlement Administrator. The Settlement Administrator shall send any written  
25 objections it receives to Class Counsel and Defense Counsel within three (3) business days of receipt.  
26 Counsel for the Parties shall file with the Court the objections and any response to the objections at  
27 least 16 court days before the date of the Final Fairness and Approval Hearing.

28 The Court shall retain final authority with respect to the consideration and admissibility of

any written objections submitted by Class Members.

**e. Encouragement of Class Members**

The Parties to this Agreement and their respective counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to include or to exclude himself or herself from this Settlement (opt out) or to object to it. However, Class Counsel may respond to inquiries from Class Members by providing factual information about the Settlement.

**Section 3.05: Final Fairness and Approval Hearing**

The Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should grant final approval pursuant to the Motion for Final Approval, and (2) consider any timely objections made pursuant to Section 3.04(d), above, and any responses from the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court an agreed upon proposed Final Order Approving Settlement of Class Action.

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**Section 3.06: Request for Dismissal of Private Attorney General Act (PAGA) Claims**

Plaintiff will take all steps necessary to obtain the dismissal of Plaintiff's and PAGA Employees' claims under PAGA, per the requirements set forth in Labor Code section 2699(l), including the submission of the proposed Settlement Agreement and the Final Order Approving Settlement of Class Action to the LWDA. The Parties will cooperate fully in requesting the dismissal of the PAGA claims by the Court and the LWDA. Notwithstanding any objection to the PAGA Allocation by the LWDA, under no circumstances will the Gross Settlement Amount be increased except as provided under Section 3.07(a).

**Section 3.07: Settlement Payment Procedures**

**b. Funding the Gross Settlement Amount & Pro Rata Increase**

In exchange for the releases set forth in this Agreement, Defendants agrees to pay the Gross Settlement Amount on a non-reversionary basis (*i.e.*, no portion will revert to Defendant under any circumstance) subject to the terms of this Agreement. The Gross Settlement Amount is premised on



1 the assumption that the Settlement includes 237,062 Qualifying Workweeks and 2,749 Class  
2 Members plus an agreed up to ten percent (10%) overage. Accordingly, if the agreed upon total  
3 number of Qualifying Workweeks included in the Settlement exceeds 260,768 Qualifying  
4 Workweeks (which is ten percent (10%) more than 237,062 Qualifying Workweeks) or 3,023 (which  
5 is ten percent (10%) more than 2,749 Class Members), the Gross Settlement Amount will increase  
6 by \$8.12 for each such additional Qualifying Workweek in excess of 260,768 Qualifying  
7 Workweeks and \$700.25 for each such additional Class Member in excess of 3,023 Class Members,  
8 whichever is greater (such increase, the “Pro Rata Increase in the Gross Settlement Amount”), and  
9 Defendants agree to pay this increased amount as the Gross Settlement Amount, subject to the terms  
10 set forth herein.

11 The Gross Settlement Amount includes Individual Class Member Settlement Payments, the  
12 PAGA Allocation, Settlement Administration Costs, Class Counsel’s attorneys’ fees and costs, and  
13 Enhancement Payments. The employer’s share of payroll taxes and withholding associated with each  
14 Class Member’s Individual Class Member Settlement Payment which is allocable to wages as  
15 provided for in Section 3.07(f), including, but not limited to, Medicare, Social Security, federal  
16 unemployment, and state unemployment, will be paid by Defendants separate from and in addition  
17 to the Gross Settlement Amount. The Claims Administrator shall be responsible for calculating and  
18 submitting the employer’s share of payroll taxes and withholding, unless Defendants elect to process  
19 the payments themselves.

20 In the event there is a pro rata increase to the Gross Settlement Amount pursuant to this  
21 Section 3.07(a), all amounts calculated and/or estimated based on the original Gross Settlement  
22 Amount of \$1,925,000.00, including, but not limited to, the components of the Gross Settlement  
23 Amount identified in the preceding paragraph (but excluding the Enhancement Payments), shall be  
24 recalculated and incorporated in this Agreement by operation of this Agreement alone. In such an  
25 event, Plaintiff may, but will not have an obligation to, request that Defendants execute an addendum  
26 to this Agreement solely to reflect the revised amounts without affecting the enforceability or  
27 binding nature of this Agreement, and Defendants agree to provide an executed counterpart within  
28 fifteen (15) business days of Plaintiff’s request. If there is any dispute regarding the interpretation

1 and/or enforcement of the escalation clause the Parties agree to engage in good faith negotiations  
2 prior to the execution of an addendum. If the Parties are unable to resolve their dispute, the Parties  
3 agree to proceed before a mediator or third party neutral to resolve their disagreement prior to  
4 engaging in motion practice such as filing a motion to enforce a settlement agreement/escalation  
5 clause.

6 No later than fifteen (15) business days after the Court's final approval of the Settlement,  
7 Defendants will transfer the Gross Settlement Amount plus Defendants' share of employer-side  
8 payroll taxes, as set forth herein, to the Settlement Administrator. The Settlement Administrator shall  
9 hold such funds in a segregated escrow account on deposit with such financial institution as shall be  
10 agreed to between the Settlement Administrator and counsel for the Parties. After transfer of the  
11 Gross Settlement Amount to the Settlement Administrator as provided for herein, Defendants shall  
12 not be responsible for any losses with respect thereto due to any action or inaction on the part of the  
13 Settlement Administrator. The timing of distributions of the Gross Settlement Amount are set forth  
14 in Section 3.07(f), below.

15 **b. Payment of Attorneys' Fees and Costs**

16 Class Counsel shall apply for an award of attorneys' fees of up to one-third (1/3) of the Gross  
17 Settlement Amount, which is currently Six Hundred Forty-One Thousand Six Hundred and Sixty-  
18 Six Dollars and Zero Cents (\$641,666.00). Class Counsel shall submit an application for an award  
19 of costs not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00).

20 Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness  
21 and Approval Hearing. Defendants will not object or oppose Plaintiff's application for these  
22 amounts. The Court's approval of attorneys' fees and/or costs in an amount less than that requested  
23 by Class Counsel shall not invalidate this Agreement.

24 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount  
25 and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class  
26 Counsel approved by the Court shall encompass all work performed and all costs and expenses  
27 related to the investigation, prosecution, and settlement of the Action incurred through the Date of  
28 Finality. To the extent that the Court approves less than the amount of attorneys' fees and/or costs

1 that Class Counsel requests, the difference between the requested and awarded amounts will be  
2 reallocated to the Net Settlement Amount.

3 **c. Payment of Settlement Administration Costs**

4 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and  
5 shall not constitute payment to any Participating Class Member. Class Counsel will submit an  
6 application for Court approval an allocation of Settlement Administration Costs no greater than  
7 Twenty Thousand Five Hundred Dollars (\$20,500.00). Defendants will not object or oppose  
8 Plaintiff's application for this amount. To the extent there are unused funds of this cost allocation,  
9 such funds will be reallocated to the Net Settlement Amount.

10 **d. PAGA Allocation**

11 In accordance with the terms, conditions and procedures set forth in this Agreement, Class  
12 Counsel will request that the Court approve allocation of Twenty Thousand Dollars and Zero Cents  
13 (\$20,000.00) of the Gross Settlement Amount to the PAGA Group. Seventy-five percent (75%) of  
14 this amount will be paid to the LWDA and twenty-five percent (25%) will be allocated to the Net  
15 Settlement Amount for distribution to PAGA Employees on a pro rata basis based on the number of  
16 Qualifying Workweeks worked during the PAGA Period. Defendant will not oppose this request for  
17 allocation and distribution of payments under this Section 3.07(d). Subject to final confirmation by  
18 the Settlement Administrator of the amount payable as set forth herein, the Parties estimate that  
19 Fifteen Thousand Dollars and Zero Cents (\$15,000.00) constitutes the seventy-five percent (75%)  
20 share payable to the LWDA. The Court's adjustment, if any, of the amount allocated to the PAGA  
21 claim will not invalidate this Agreement, as long as final approval of the Settlement is granted. If  
22 the Court requires an increase to the PAGA Allocation, such funds would be drawn from the Gross  
23 Settlement Amount.

24 Payments to PAGA Employees associated with this section shall not be subject to employee  
25 withholdings and deductions, and will be reported in the year of payment as non-wage income on a  
26 Form 1099 issued by the Settlement Administrator and such other state or local tax reporting forms  
27 as may be required by law.  
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**e. Payment of Enhancement Payments to Plaintiffs**

Subject to Court approval, Plaintiff shall receive Enhancement Payments of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for services as class representatives and in exchange for a general release of Plaintiff's claims. Defendants will not oppose this request. The Enhancement Payments will be paid from the Gross Settlement Amount and is not allocated as payment to any Participating Class Member. To the extent that the Court approves less than the amount of the Enhancement Payment that Class Counsel requests, the difference between the requested and awarded amount will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Enhancement Payments represents payment to Plaintiff for services performed on behalf of the Class Members and not to be considered wages, the Settlement Administrator will not withhold any taxes from the Enhancement Payment. The Enhancement Payment will be reported on a Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing authorities as required by law.

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**f. Individual Class Member Settlement Payments**

The Parties agree that the Net Settlement Amount shall be used to fund Individual Class Member Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of Qualifying Workweeks each Participating Class Member worked during the Class Period.

To calculate the amount each Participating Class Member will receive, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks worked by all Participating Class Members during the Class Period to determine the base dollar amount per Qualifying Workweek. Each Participating Class Member's estimated Individual Class Member Settlement Payment will be set forth in his or her Notice Packet. After issuance of the Final Order by the Court and within the times set forth in this Agreement, the Settlement Administrator shall disperse Individual Class Member Settlement Payments to Participating Class Members.

Each Individual Class Member Settlement Payment will represent wages and interest and penalties with respect to wages, allocated using the following formula: ten percent (10%) shall be allocated to wages; sixty percent (60%) shall be allocated to penalties; and thirty percent (30%) shall

1 be allocated to interest. Based on the information contained in the Class List, the Settlement  
2 Administrator shall calculate: (a) whether there is any Pro-Rata Increase in the Gross Settlement  
3 Amount as provided for in Section 3.07(a); (b) the Net Settlement Amount; (c) the Individual Class  
4 Member Settlement Payment for each Participating Class Member based on the formula specified  
5 above; (d) the amount of the Individual Class Member Settlement Payments to be allocated to wages,  
6 interest and penalties based on the formula specified above; (e) Defendants' share of the payroll  
7 taxes applicable to the Net Settlement Amount allocated to wages; and (f) the employee tax  
8 withholding amount based on the allocation of each Individual Class Member Settlement Payment  
9 to wages. The Settlement Administrator shall provide such calculations in writing to the Class  
10 Counsel and Defense Counsel not later than 10 days after being provided the Class List, who shall  
11 notify the Settlement Administrator in writing of any objections thereto within 7 calendar days of  
12 receipt of such calculations. Thereafter, the Parties and the Settlement Administrator shall seek to  
13 resolve any differences. Any differences not resolved within 15 days shall be resolved by the Court  
14 unless the difference involve the escalation clause. If so, those differences will be resolved by the  
15 process described in Section 3.07(a) above.

16 Individual Class Member Settlement Payments allocated to wages will be reduced by  
17 applicable employee withholdings, and the Settlement Administrator will issue a Form W-2 for the  
18 wage portion of the Individual Class Member Settlement Payments. The Settlement Administrator  
19 will issue a Form 1099 to the extent required by law for the interest and penalty portions of the  
20 Individual Class Member Settlement Payments. Participating Class Members shall have 180 days  
21 from the date their Individual Class Member Settlement Payment checks are dated to cash their  
22 settlement checks ("Check-Cashing Period"). Any checks that are not cashed upon the expiration of  
23 the Check-Cashing Period will be void, and the Settlement Administrator will deliver the amount of  
24 the uncashed funds to the California State Controller's Unclaimed Property Division as explained  
25 below.

26 If the Settlement Administrator is unable to obtain a valid mailing address or if any funds  
27 representing Individual Class Member Settlement Payments remain uncashed upon the expiration of  
28 the Check-Cashing Period, the Settlement Administrator will deliver the monies represented by the

1 check to the Controller of the State of California, who will deposit such amounts into the State of  
2 California's Unclaimed Properties Fund with an identification of the amount of unclaimed funds  
3 attributable to each Class Member.

4 **g. Distribution of the Gross Settlement Amount**

5 The Settlement Administrator will distribute the Individual Class Member Settlement  
6 Payments no later than 14 days after Defendant pays the Gross Settlement Amount to the Settlement  
7 Administrator.

8 If Individual Class Member Settlement Payments are returned to the Settlement  
9 Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a  
10 valid mailing address by performing a skip trace or a mass search on LexisNexis databases based on  
11 set criteria and, if another address is identified, shall mail the check to the newly identified address.  
12 If the Settlement Administrator is unable to obtain a valid mailing address or if any funds  
13 representing Individual Class Member Settlement Payments remain uncashed upon the expiration of  
14 the Check-Cashing Period, the Settlement Administrator will deliver the monies represented by the  
15 check to the Controller's Unclaimed Property Fund with an identification of the amount of  
16 unclaimed funds attributable to each Class Member.

17 **h. Default on Payment**

18 Defendants' failure to fund the Gross Settlement Amount within fifteen (15) business days  
19 after the date that the Court grants final approval of the Settlement, shall be considered a default. In  
20 the event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator  
21 will provide notice to Class Counsel and Defense Counsel within five (5) business days of the missed  
22 payment. Thereafter, Defendants will have five (5) business days to cure the default and tender  
23 payment to the Settlement Administrator. To the extent Defendants fail to cure the default within  
24 the times set forth herein, Plaintiff will be entitled to enter judgment against Defendants, on an ex  
25 parte basis, for the balance of the unpaid Gross Settlement Amount to date, and reasonable attorneys'  
26 fees and costs.

27 **i. No Credit Toward Benefit Plans**

28 The payments made to Participating Class Members or PAGA Employees under this

1 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to  
2 calculate any additional benefits under any benefit plans to which any Class Members may be  
3 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase  
4 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’  
5 intent that this Agreement will not affect any rights, contributions, or amounts to which any Class  
6 Member or PAGA Employee may be entitled under any benefit plans.

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10 **ARTICLE IV**

11 **RELEASES**

12 **Section 4.01: Class Member Released Claims**

13 Upon the Date of Finality, Plaintiff and Participating Class Members who do not opt out of  
14 the Settlement release all claims were or that could have been alleged in Plaintiff’s Operative  
15 Complaint or the prior pleadings that arose during the Class Period based on the same set of facts  
16 alleged in Plaintiff’s Operative Complaint. The Class Member Released Claims include, but are not  
17 limited to, any and all claims for: (1) all claims for unpaid minimum wages; (2) all claims for unpaid  
18 overtime wages including time and a half and double-time; (3) all claims for meal period violations  
19 and the failure to pay premiums of one hour of pay at the regular rate for meal period violations; (4)  
20 all claims for rest period violations and the failure to pay premiums of one hour of pay at the regular  
21 rate for rest period violations; (5) all claims for the failure to provide accurate itemized wage  
22 statements; (6) all claims for the failure to timely pay wages upon termination; (7) all claims for  
23 failure to reimburse necessary business expenses; (8) all claims asserted through California Business  
24 & Professions Code §§ 17200, *et seq.*; and (9) all claims for attorneys’ fees, costs, penalties (civil or  
25 otherwise), damages, punitive damages, premiums, restitution, injunctive relief, declaratory relief,  
26 or other monies, remuneration, interest, or relief of any kind that flow from the claims released  
27 herein. Collectively, these claims shall be referred to as “Class Member Released Claims.” Plaintiff  
28 and Participating Class Members are hereby releasing the Released Claims through the end of the

1 Class Period and for the entire Class Period against Defendants together with their subsidiaries,  
2 divisions, predecessors, owners, officers, directors, current and former employees and agents,  
3 attorneys, successors, and assigns (collectively, including Defendants, the “Released Parties”). The  
4 Class Member Released Claims also include all claims Plaintiff and Participating Class Members  
5 may have against the Released Parties relating to (i) the payment and allocation of Class Counsel’s  
6 Fees and Costs to Class Counsel pursuant to this Settlement Agreement and (ii) the payment of the  
7 Enhancement Awards pursuant to this Settlement Agreement. It is the intent of the Parties that the  
8 judgment entered by the Court upon final approval of the Settlement shall have *res judicata* effect  
9 and be final and binding upon Plaintiff and all Participating Class Members regarding all of the Class  
10 Member Released Claims. The definition of a Released Claim shall not be limited in any way by the  
11 possibility that Plaintiff or Participating Class Members may discover new facts or legal  
12 theories/arguments not alleged in the operative complaint but which might serve as an alternative  
13 basis for pursuing the same claims and causes of action falling within the definition of Class Member  
14 Released Claims.

15 **Section 4.02: PAGA Released Claims**

16 Plaintiff, in her capacity as proxy for the State of California, the LWDA, and as a private  
17 attorney general acting on behalf of herself and the PAGA Employees, shall be deemed to have, and  
18 by operation of the Final Order Approving Settlement of Class Action shall have, fully, finally and  
19 forever released, relinquished and discharged all claims arising during the PAGA Release Period  
20 seeking civil penalties under PAGA against Released Parties that Plaintiff in her capacity as proxy  
21 for the State of California, the LWDA, to the extent permitted by law, and as a private attorney  
22 general acting on behalf of herself and the PAGA Employees, asserted or could reasonably have  
23 asserted based on the facts alleged in the Action and/or the LWDA letter, including: (1) all claims  
24 for unpaid minimum wages; (2) all claims for unpaid overtime wages including time and a half and  
25 double-time; (3) all claims for meal period violations and the failure to pay premiums of one hour  
26 of pay at the regular rate for meal period violations; (4) all claims for rest period violations and the  
27 failure to pay premiums of one hour of pay at the regular rate for rest period violations; (5) all claims  
28 for the failure to provide accurate itemized wage statements; (6) all claims for the failure to timely



1 pay wages upon termination; (7) all claims for failure to reimburse necessary business expenses; and  
2 (8) all claims asserted through California Business & Professions Code §§ 17200, *et seq.*  
3 Collectively, these claims shall be referred to as the “PAGA Released Claims.”

4 This release shall bar all PAGA Released Claims by or on behalf of Plaintiff and all PAGA  
5 Employees regardless of whether Plaintiff and/or a PAGA Employee negotiates his/her settlement  
6 checks sent pursuant to this Settlement. Plaintiff and Participating Class Members are hereby  
7 releasing the PAGA Released Claims through the end of the PAGA Period and for the entire PAGA  
8 Period.

9 **Section 4.03: General Release by Plaintiff**

10 Upon the Date of Finality, Plaintiff, on behalf of herself and Releasing Parties, waives,  
11 releases, acquits, and forever discharges the Released Parties from any and all claims, actions,  
12 charges, complaints, grievances, and causes of action, of any nature arising from Plaintiff’s  
13 employment, hiring, or separation of employment with Defendants, whether known or unknown,  
14 which exist or may exist as of the Parties’ execution of this Agreement, including, but not limited to,  
15 claims arising under the Americans With Disabilities Act; the Fair Labor Standards Act; the Equal  
16 Pay Act; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as  
17 amended, including, but not limited to, breach of fiduciary duty and equitable claims to be brought  
18 under § 1132(a)(3) (“ERISA”); the Worker Adjustment and Retraining Notification Act, as amended;  
19 Title VII of the Civil Rights Act of 1964; the Vocational Rehabilitation Act of 1973; the Civil Rights  
20 Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act; the Family and Medical  
21 Leave Act (to the extent permitted by law); the California Family Rights Act (“CFRA”); California’s  
22 Fair Employment and Housing Act (“FEHA”); California’s PAGA (Cal. Labor Code § 2698, *et seq.*);  
23 Cal. Bus. and Prof. Code § 17200 *et seq.* (“UCL”); the California Labor Code (including, but not  
24 limited to Sections 201, 202, 203, 204, 210, 226, 226.3, 226.6, 226.7, 510, 512, 558, 1174, 1175,  
25 1194, and 1198); any IWI California Wage Orders and California Code of Regulations, Title 8,  
26 section 11000, *et seq.*; the Fair Credit Reporting Act.; the California Consumer Credit Reporting  
27 Agencies Act; the California Investigative Consumer Reporting Agencies Act, California Civil Code  
28 section 1786, *et seq.*, any claim for attorneys’ fees, expenses or costs; and/or other federal, state or

1 local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution  
2 or ordinance and/or public policy, contract or tort law; provided, however, that Plaintiff does not  
3 waive any rights with respect to, or release the Released Parties from, any claim: (1) for California  
4 Workers' Compensation benefits; (2) for unemployment compensation benefits; (3) that cannot be  
5 released by private contract; or (4) for breach of the terms of the Stipulation between Class  
6 Representative and Defendant.

7 Section 1542 of the California Civil Code provides as follows:

8 *“A general release does not extend to claims that the creditor or releasing*  
9 *party does not know or suspect to exist in his or her favor at the time of*  
10 *executing the release and that, if known by him or her, would have*  
11 *materially affected his or her settlement with the debtor or released*  
12 *party.”*

13 Plaintiff's general release provided herein is made with an express waiver and relinquishment  
14 of any claim, right, or benefit under California Civil Code § 1542. The Parties warrant that the Parties  
15 have read this Agreement, including this waiver of California Civil Code § 1542, and that the Parties  
16 have consulted with or had the opportunity to consult with counsel of the Parties' choosing about  
17 this Agreement and specifically about the waiver of § 1542, and that the Parties understand this  
18 Agreement and the § 1542 waiver, and so the Parties freely and knowingly enter into this Agreement.  
19 Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to  
20 those Plaintiff now know or believe to be true regarding the matters released or described in this  
21 Agreement, and even so Plaintiff agrees that the releases and agreements contained in this  
22 Agreement shall remain effective in all respects notwithstanding any later discovery of any different  
23 or additional facts.

24 **Section 4.04: No Additional Attorneys' Fees or Costs**

25 Except for the allocation of attorneys' fees and costs from the Gross Settlement Amount set  
26 forth herein, the Parties agree to bear their own attorneys' fees and costs related to this Action.

27 **Section 4.05: Modification or Severance of Terms**

28 If any of the provisions, terms, clauses, waivers or releases of claims and rights contained in

1 the releases applicable to Plaintiff, Class Members, and/or PAGA Employees are declared illegal,  
2 unenforceable, or ineffective in a legal forum of competent jurisdiction, such provisions, terms,  
3 clauses, waivers or releases of claims or rights shall be modified, if possible, in order to achieve, to  
4 the extent possible, the intentions of the Parties and, if necessary, such provisions, terms, clauses,  
5 waivers and releases of claims and rights shall be deemed severable, such that all other provisions,  
6 terms, clauses and waivers and releases of claims and rights contained in these releases shall remain  
7 valid and binding upon the Parties; provided, however, that, notwithstanding any other provision of  
8 the releases, if any portion of the waiver or release of claims or rights is held to be unenforceable,  
9 Defendants may, at their option, seek modification or severance of such portion, or terminate, cancel,  
10 and declare void the Agreement. Should Defendants elect to terminate, cancel, or void the  
11 Agreement, they will be solely responsible for the costs the Settlement Administrator incurred to  
12 date.

## 13 ARTICLE V

### 14 LIMITATIONS ON USE OF THIS SETTLEMENT

#### 15 **Section 5.01: No Admission**

16 Defendants dispute the allegations in the Action and dispute that, but for this Settlement, a  
17 Class should not have been certified in the Action. This Agreement is entered into solely for the  
18 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be  
19 construed as an admission of liability or wrongdoing by Defendants. The Parties enter into this  
20 Agreement to resolve the disputes that have arisen between them and to avoid the burden, expense,  
21 and risk of continued litigation. In entering into this Agreement, Defendants do not admit—and in  
22 fact specifically denies—that they violated any federal, state, or local law; violated any regulations  
23 or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal  
24 requirements; breached any contract; violated or breached any duty; engaged in any  
25 misrepresentation or deception; or engaged in any other unlawful conduct with respect to their  
26 employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations  
27 connected with it, will be construed as an admission or concession by Defendants of any such  
28 violations or failures to comply with any applicable law. Except as necessary in a proceeding to

1 enforce the terms of this Agreement, this Agreement and its terms and provisions may not be offered  
2 or received as evidence in any action or proceeding to establish any liability or admission on the part  
3 of Defendants or the Released Parties or to establish the existence of any condition constituting a  
4 violation of, or non-compliance with, federal, state, local, or other applicable law.

5 **Section 5.02: Non-Evidentiary Use**

6 Whether or not the Date of Finality occurs, neither this Agreement nor any of its terms nor  
7 the Settlement itself will be: (a) construed as, offered, or admitted in evidence as, received as, or  
8 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,  
9 including but not limited to, evidence of a presumption, concession, indication, or admission by any  
10 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or  
11 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further  
12 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this  
13 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims  
14 released through this Agreement.

15 **Section 5.03: Nullification**

16 The Parties have agreed to the certification of the Class encompassing all claims alleged in  
17 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason  
18 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this  
19 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order  
20 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the  
21 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this  
22 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all  
23 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement  
24 had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing  
25 to stipulate to class certification of all causes of action pled in the Action as part of the Settlement  
26 will have no bearing on, and will not be admissible in connection with, the issue of whether the Class  
27 should be certified by the Court in a non-settlement context in this Action or any other action, and  
28 in any of those events, Defendants expressly reserve the right to oppose certification of the Class.

1 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the  
2 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

3 **ARTICLE VI**

4 **MISCELLANEOUS PROVISIONS**

5 **Section 6.01: Amendments or Modification**

6 The terms and provisions of this Agreement may be amended or modified only by an express  
7 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

8 **Section 6.02: Assignment**

9 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their  
10 respective heirs, trustees, executors, administrators, successors, and assigns; but this Agreement is  
11 not designed to and does not create any third party beneficiaries, either express or implied.

12 **Section 6.03: Governing Law**

13 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties  
14 shall be determined, in accordance with the laws of the State of California, without regard to conflicts  
15 of laws.

16 **Section 6.04: Entire Agreement**

17 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,  
18 contains the entire understanding of the Parties with respect to the subject matter contained herein.  
19 In case of any conflict between text contained in Articles I through VI of this Agreement and text  
20 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be  
21 controlling, unless the Exhibits are changed by or in response to a Court order. There are no  
22 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject  
23 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement  
24 supersedes all prior agreements and understandings among the Parties with respect to the Settlement  
25 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of  
26 prior agreements or proposals.

27 **Section 6.05: Waiver of Compliance**

28 Any failure of any Party, Class Counsel, or Defense Counsel to comply with any obligation,

1 covenant, agreement, or condition set forth in this Agreement may be expressly waived in writing,  
2 to the extent permitted under applicable law, by the Party or Parties and their respective counsel  
3 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to  
4 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition  
5 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

6 **Section 6.06: Counterparts and Fax/PDF Signatures**

7 This Agreement, and any amendments hereto, may be executed in any number of  
8 counterparts, and any Party and/or their respective counsel may execute any such counterpart, each  
9 of which when executed and delivered shall be deemed to be an original. All counterparts taken  
10 together shall constitute one instrument. A fax or PDF signature on this Agreement shall be as valid  
11 as an original signature.

12 **Section 6.07: Meet and Confer Regarding Disputes**

13 Should any dispute arise among the Parties or their respective counsel regarding the  
14 implementation or interpretation of this Agreement, a representative of Class Counsel and a  
15 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior  
16 to submitting such disputes to the Court.

17 **Section 6.08: Agreement Binding on Successors**

18 This Agreement will be binding upon, and inure to the benefit of, and be enforceable by and  
19 against, the successors in interest of each of the Parties.

20 **Section 6.09: Cooperation in Drafting**

21 The Parties have cooperated in the negotiation and preparation of this Agreement. This  
22 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,  
23 was the drafter or participated in the drafting of this Agreement.

24 **Section 6.10: Fair and Reasonable Settlement**

25 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement  
26 of the Action and have arrived at this Agreement through arm's-length negotiation and in the context  
27 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties  
28 further believe that the Settlement is consistent with public policy, and fully complies with

1 applicable law. The Parties further acknowledge that they are each represented by competent counsel  
2 and have had an opportunity to consult with their counsel regarding the fairness and reasonableness  
3 of this Settlement. The Parties further acknowledge that they are entering into this Agreement as a  
4 free and voluntary act, without duress, undue pressure or influence of any kind or nature whatsoever,  
5 and that neither the Plaintiffs nor Defendant has relied on any promises, representations or warranties  
6 regarding the resolution of claims relating to the Action other than as set forth in this Agreement.

7 **Section 6.11: Headings**

8 The descriptive heading of any section or paragraph of this Agreement is inserted for  
9 convenience of reference only and does not constitute a part of this Agreement and shall not be  
10 considered in interpreting this Agreement.

11 **Section 6.12: Notice**

12 Except as otherwise expressly provided in the Agreement, all notices, demands, and other  
13 communications under this Agreement must be in writing and addressed as follows:

14 *To Plaintiff and the Class:*

15 AEGIS LAW FIRM, PC  
16 Kashif Haque  
17 Samuel A. Wong  
18 Jessica L. Campbell  
19 Fawn F. Bekam  
20 9811 Irvine Center Drive, Suite 100  
21 Irvine, California 92618

22 And

23 *To Defendants:*

24 Linda Claxton  
25 Michael D. Thomas  
26 OGLETREE, DEAKINS, NASH, SMOAK  
27 & STEWART, P.C.  
28 400 South Hope Street, Suite 1200  
Los Angeles, CA 90071

**Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the

1 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the  
2 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall  
3 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest  
4 extent to enforce and effectuate the terms and intent of this Agreement.

5 **Section 6.14: Mutual Full Cooperation**

6 The Parties agree fully to cooperate with each other to accomplish the terms of this  
7 Agreement, including but not limited to execution of such documents, and taking such other action  
8 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this  
9 Agreement shall use their commercially reasonable efforts, including all efforts contemplated by this  
10 Agreement, to effectuate this Agreement and its terms. In the event the Parties are unable to reach  
11 agreement on the form or content of any document needed to implement the Settlement, or on any  
12 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the  
13 Parties agree to seek the assistance of the Court.

14 **Section 6.15: Authorization to Act**

15 Class Counsel represent and warrant that they are authorized by Plaintiff, and Defense  
16 Counsel warrants that they are authorized by Defendants to take all appropriate action required to  
17 effectuate the terms of this Agreement, except for signing documents, including but not limited to  
18 this Agreement, that are required to be signed by the Parties. Defendants represents and warrants  
19 that the individuals executing this Agreement on their behalf have the full right, power, and authority  
20 to enter into this Agreement and to carry out the transactions contemplated herein.

21 **Section 6.16: No Reliance on Representations**

22 The Parties have made such investigation of the facts and the law pertaining to the matters  
23 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,  
24 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any  
25 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted  
26 rights, or with regard to the advisability of making and executing this Agreement, or with respect to  
27 any other matters. No representations, warranties, or inducements, except as expressly set forth  
28 herein, have been made to any party concerning this Agreement.



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**Section 6.17: No Tax Advice**

The Parties make no representations as to the tax treatment or legal effect of the payments specified herein, and Class Members are not relying on any statement or representation by the Parties, Class Counsel, or Defense Counsel in this regard. Participating Class Members and Class Counsel understand and agree that they shall be responsible for the payment of all taxes and penalties assessed on the payments specified herein, and shall hold the Parties, Class Counsel, and Defense Counsel free and harmless from and against any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

**Section 6:18 Limited Appeal Rights**

Defendants, Class Counsel, and the Named Plaintiffs waive their right to file an appeal, writ, or any challenge whatsoever to the terms of this Settlement; provided, however, that Class Counsel and the Named Plaintiffs may appeal the Court's determinations with regard to their requests for Enhancement Payments (Section 3.07(e)) and attorney's fees and costs (Section 3.07(b)). Any such appeal, however, will have no effect whatsoever on the other terms and provisions of this Settlement, including, by way of example but not of limitation, the releases set out Sections 4.01, 4.02, and 4.03.

**EXECUTION BY PARTIES AND COUNSEL**

The Parties hereby execute this Agreement.

Dated: 01-12-02-19

MARIA PONCE

By: Maria Ponce  
Maria Ponce

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Dated:

11/22/19

AH 2005 Management, L.P.

By: AH 2005 Management GenPar L.L.C.,  
general partner

By:   
(Signature)

Gregory J. Moundas  
(Printed Name) **Vice President**

\_\_\_\_\_  
(Title)

Dated:

11/22/19

Pillar Hotels and Resorts, LLC

By:   
(Signature)

Gregory J. Moundas  
(Printed Name) **Vice President**

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(Title)

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Approved as to form:

Dated:

11/27/19

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By:

Michael D Thomas

Linda Claxton  
Michael D. Thomas  
Attorneys for Defendants  
AH 2005 Management, L.P., Pillar Hotels and  
Resorts LLC, AH 2005 Management, Gen-  
Par, L.L.C

Dated:

11/27/19

AEGIS LAW FIRM, PC

By:

[Signature]

Kashif Haque  
Samuel A. Wong  
Jessica L. Campbell  
Fawn F. Bekam  
Attorneys for Plaintiff  
Maria Ponce