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11 Attorneys for Plaintiff  
12 AUTUMN COBBS

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF ORANGE  
16

17  
18 AUTUMN COBBS, an individual on behalf of  
herself and other similarly situated,

19 Plaintiff,

20 v.

21 MGA TRAVEL CALIFORNIA, INC.; and DOES  
22 1 to 10 inclusive,

23 Defendants.

Case No. 30-2019-01099034-CU-OE-CXC

**CLASS ACTION SETTLEMENT  
AGREEMENT**

1 This Class Action Settlement Agreement and Release, including Exhibits A and B hereto  
2 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiff  
3 Autumn Cobbs (“Plaintiff”) on behalf of herself and the Settlement Class (as defined below), on the one  
4 hand, and MGA Travel California, Inc. (“MGA” and “Defendant”) on the other hand. Plaintiff and  
5 Defendant (collectively, the “Parties”) enter into this Agreement to effect a full and final settlement and  
6 preclusive judgment resolving all claims brought or that could have been brought against Defendant based  
7 on the facts alleged in *Autumn Cobbs v. MGA Travel, Inc.*, Case No. 30-2019-01099034-CU-OE-CXC,  
8 filed in the Orange County Superior Court on September 20, 2019 (the “Action”). This Agreement is  
9 intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined  
10 and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the  
11 Court.

12 **I. RECITALS**

13 This Agreement is made in consideration of the following facts:

14 1.1 WHEREAS, on September 20, 2019, Plaintiff Autumn Cobbs filed a class action complaint  
15 against Defendant MGA Travel California, Inc. in the Superior Court of California for the County of  
16 Orange, on behalf of herself and a proposed class consisting of “all non-exempt hourly health care  
17 professionals employed by Defendant in California from September 20, 2015 through the date of class  
18 certification whose employment was governed by an Agreement that provided for a weekly Per Diem,”  
19 and alleging the following wage-related causes of action: 1) Failure to Pay Overtime Wages (Cal. Labor  
20 Code §§ 510, 1194); 2) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et. seq.*); and 3)  
21 Waiting Time Penalties (Cal. Labor Code § 203).

22 1.2 WHEREAS, Defendant denies the allegations in the Action; denies that it has engaged in  
23 any wrongdoing; denies that Plaintiff’s allegations constitute valid claims; denies that a litigation class  
24 could properly be certified in the Action; and states that it is entering into this Settlement Agreement solely  
25 to eliminate the burden, expense, and delay of further litigation, and on the express conditions that (a) if  
26 for any reason the Settlement is not finalized according to the terms of this Agreement, the Settlement and  
27 the documents generated as a result of the Settlement shall not be usable for any purpose in the Action,  
28 and (b) this Settlement and the documents generated as a result of the Settlement are not admissible or

1 usable in any other civil or administrative proceeding or any arbitration, except to the extent necessary to  
2 enforce this Settlement and the orders, judgment and agreements arising from this Settlement;

3 1.3 WHEREAS, a *bona fide* dispute exists as to whether any amount of wages or penalties are  
4 due from Defendant to the Plaintiff or Settlement Class Members;

5 1.4 WHEREAS, prior to reaching a settlement, the Parties engaged in both formal and informal  
6 discovery, exchanging information and reviewing and analyzing data and documents made available by  
7 Defendant, which enabled Plaintiff to thoroughly evaluate Plaintiff's claims and the claims of the putative  
8 class, and the likely outcomes, risks and expense of pursuing litigation;

9 1.5 WHEREAS, following extended negotiations, Plaintiff and Class Counsel believe that the  
10 Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the  
11 evidence developed, and the remedies that might be obtained against Defendant in the Action. Plaintiff  
12 and Class Counsel further recognize and acknowledge the expense and length of continued proceedings  
13 necessary to prosecute the Action against Defendant through trial and appeals. They also have considered  
14 the uncertain outcome and the risk of any litigation, especially in complex litigation such as the Action,  
15 as well as the difficulties and delays inherent in any such litigation. They are also mindful of the inherent  
16 challenges of proof and the strength of the defenses to the alleged claims, and therefore believe that it is  
17 desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice  
18 as set forth herein, subject to the approval of the Court;

19 1.6 WHEREAS, Plaintiff and Class Counsel, based on their own independent investigations  
20 and evaluations, have examined the benefits to be obtained under the terms of this Settlement Agreement,  
21 have considered the claims of Plaintiff, the claims of the average Settlement Class Member, the risks  
22 associated with the continued prosecution of the Action, and the likelihood of success on the merits of the  
23 Action, and believe that, after considering all the circumstances, including the uncertainties surrounding  
24 the risk of further litigation and the defenses that Defendant has asserted and could assert, the proposed  
25 Settlement set forth in this Agreement is fair, reasonable, adequate, in the best interests of Plaintiff and  
26 the Settlement Class, and confers substantial benefits upon the Settlement Class;

1           1.7     WHEREAS, Plaintiff warrants and represents that she is effecting this Settlement and  
2     executing this Agreement after having received full legal advice as to her rights and has had the  
3     opportunity to obtain independent counsel to review this Agreement;

4           1.8     WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement, and  
5     any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not  
6     constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or evidence  
7     of: (i) any wrongdoing, (ii) any violation of any statute or law, (iii) any liability on the claims or allegations  
8     in the Action on the part of any Released Parties, or (iv) the propriety of certifying a litigation class in the  
9     Action or any other proceeding; and shall not be used by any person for any purpose whatsoever in any  
10    legal proceeding, including but not limited to arbitrations, and/or other civil and/or administrative  
11    proceedings, other than a proceeding to enforce the terms of the Agreement;

12          1.9     WHEREAS, for settlement purposes only, Defendant will stipulate to the certification of  
13    the Settlement Class as further defined in this Agreement pursuant to the requirements of Section 382 of  
14    the California Code of Civil Procedure. Other than for purposes of this Agreement, Defendant disputes  
15    that certification is proper for the purposes of litigating the class claims proposed in or flowing from the  
16    claims asserted in the Action;

17          1.10    WHEREAS, the Parties desire to compromise and settle all claims that have been or, based  
18    on the facts alleged, could have been brought against Defendant in the Action;

19          1.11    NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
20    AGREED, by Plaintiff for himself and on behalf of the Settlement Class, and by Defendant that, subject  
21    to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and  
22    with prejudice, and the Released Claims shall be finally and fully compromised, settled and dismissed as  
23    to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this  
24    Agreement.

25    **II.     DEFINITIONS**

26           Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings  
27    set forth below:

28          2.1     “Class Counsel” means Hayes Pawlenko LLP.

1           2.2     “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s litigation and  
2 resolution of the Action, and all claims resolved by this Settlement, as awarded by the Court, which will  
3 be paid exclusively from the Total Settlement Amount, and may not exceed thirty-three and one-third  
4 percent (33 1/3%) of the Total Settlement Amount (equaling \$250,000.00) and (ii) all expenses and costs  
5 incurred by Class Counsel in litigation and resolution of the Action, and all claims resolved by this  
6 Settlement, not to exceed \$5,000, which will be paid exclusively from the Total Settlement Amount.

7           2.3     “Class Information” means information regarding Settlement Class Members that  
8 Defendant will in good faith compile from its records and provide to the Settlement Administrator. Class  
9 Information shall be provided in a Microsoft Excel spreadsheet and shall include, if possible, for each  
10 Settlement Class Member: full name, last known mailing address, last known email address, social  
11 security number, and total Overtime Hours Worked. Because Settlement Class Members’ private  
12 information is included in the Class Information, the Settlement Administrator shall maintain any Class  
13 Information received in confidence and shall use and disclose Class Information only for purposes of this  
14 Settlement and for no other purpose, and pursuant to the restrictions as described herein. Further, within  
15 the Settlement Administrator’s operations, access shall be limited to those personnel with a need to use  
16 the Class Information as part of the administration of the Settlement. Except as expressly set forth herein,  
17 the Settlement Administrator shall not disclose the Class Information to Class Counsel without the written  
18 consent of Defense Counsel.

19           2.4     “Class Notice” means the notice of class action settlement to be provided to Settlement  
20 Class Members, without material variation from the relevant portion of Exhibit A.

21           2.5     “Court” means the Superior Court of California – Orange County.

22           2.6     “Defense Counsel” means Littler Mendelson, P.C.

23           2.7     “Effective Date” means one (1) day after which both of the following events have occurred:  
24 (i) the Court’s Final Approval order has been entered and (ii) the Court’s Final Approval order and  
25 Judgment have become Final.

26           2.8     “Exclusion/Written Objection Deadline” means the final date by which a Settlement Class  
27 Member may either (i) submit a written objection to any aspect of the Settlement, or (ii) submit a written  
28 request to be excluded from the Settlement. The Exclusion/Written Objection Deadline shall be sixty (60)

1 days after the Notice Date, and shall be specifically identified and set forth in the Preliminary Approval  
2 Order and the Class Notice.

3 2.9 “Final” when referring to a judgment or order, means that (i) the judgment is a final,  
4 appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on  
5 which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the  
6 judgment having been commenced, such appeal or other review is finally concluded and no longer is  
7 subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for re-  
8 hearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been  
9 finally resolved in such manner that affirms the judgment order in its entirety, and remittitur has been  
10 issued.

11 2.10 “Final Approval” means the Court’s entry of a Final Approval order finally approving this  
12 Settlement.

13 2.11 “Final Approval Hearing” means the hearing at or after which the Court will make a final  
14 decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally approved by  
15 the Court.

16 2.12 “Individual Settlement Payment” means the amount payable to each Settlement Class  
17 Member from the Total Settlement Amount. Payments to Settlement Class Members shall be classified as  
18 1/3 wages, 1/3 penalties and 1/3 interest. A W-2 Form and/or IRS Form 1099-MISC shall be issued if  
19 required.

20 2.13 “Judgment” means the judgment to be entered in the Action on Final Approval of this  
21 Settlement.

22 2.14 “Legally Authorized Representatives” means an administrator/administratrix, personal  
23 representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian,  
24 conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed  
25 person responsible for handling the business affairs of a Settlement Class Member.

26 2.15 “Named Plaintiff’s General Released Claims” means any and all past, present, and future  
27 claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any  
28 nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter,

1 expected or unexpected, pursuant to any theory of recovery (including but not limited to those based in  
2 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation), and  
3 for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties,  
4 interest, attorneys' fees, costs or disbursements, against the Released Parties, including unknown claims  
5 covered by California Civil Code section 1542, as quoted below in Paragraph 9.4, by Plaintiff, arising  
6 during the period from the beginning of the Plaintiff's first interaction with any defendant to the date on  
7 which the Court enters the order of Final Approval of this Settlement, for any type of relief that can be  
8 released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs,  
9 penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest,  
10 attorneys' fees, litigation costs, restitution, or injunctive, declaratory or equitable relief, with the exception  
11 of any claims which cannot be released as a matter of law. Plaintiff will generally release all known and  
12 unknown claims against the Released Parties, and waive the application of section 1542 of the California  
13 Civil Code. The claims released pursuant to this paragraph include but are not limited to the Settlement  
14 Class Members' Released Claims, as well as any other claims under any provision of the Fair Labor  
15 Standards Act, the California Labor Code, the California Code of Regulations, or any applicable California  
16 Industrial Welfare Commission Wage Order(s), and claims under state or federal discrimination statutes,  
17 including, without limitation the California Fair Employment and Housing Act, California Government  
18 Code section 12940 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42  
19 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age  
20 Discrimination in Employment Act of 1967, as amended; the Employee Retirement Income Security Act  
21 of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines.

22       2.16 "Net Settlement Amount" is the Total Settlement Amount less the following: a) the Class  
23 Counsel Award approved by the Court; b) the Service Award approved by the Court; and c) the Settlement  
24 Administrator Expenses.

25       2.17 "Notice Date" means the date of the initial distribution of the Class Notice to Settlement  
26 Class Members, as set forth in Section VI.

27       2.18 "Opt Out List" means the Court-approved list of all persons who timely and properly  
28 request exclusion from the Settlement Class.

1           2.19    “Overtime Hours Worked” means the best approximation of the total number of California  
2 overtime hours a Settlement Class Member worked during the Settlement Class Period for MGA in  
3 California, based on the records and data maintained by MGA.

4           2.20    “Plaintiff” means Autumn Cobbs.

5           2.21    “Plan of Allocation” means the plan for allocating the Total Settlement Amount between  
6 and among Settlement Class Members as approved by the Court.

7           2.22    “Preliminary Approval Date” means the date that the Court enters the Preliminary  
8 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii) enters  
9 an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement Class, an  
10 opportunity to submit timely and proper objections to the Settlement, and setting a hearing on the fairness  
11 of the terms of Settlement, including approval of the Class Counsel Award.

12          2.23    “Preliminary Approval Order” means the order that Plaintiff and Defendant will seek from  
13 the Court, without material variation from Exhibit B. Entry of the Preliminary Approval Order shall  
14 constitute preliminary approval of the Settlement Agreement.

15          2.24    “Released Claims” means (i) Settlement Class Members’ Released Claims and (ii) Named  
16 Plaintiff’s General Released Claims.

17          2.25    “Released Parties” means MGA Travel California, Inc., and its past and present  
18 subsidiaries, affiliates and/or parents, their attorneys, each such entity’s successors and predecessors in  
19 interest, and all such entities respective officers, directors, employees, administrators, fiduciaries, and  
20 trustees, whether past or present.

21          2.26    “Service Award” means the amounts approved by the Court to be paid to Plaintiff, in  
22 addition to Plaintiff’s Individual Settlement Payment, in recognition of her efforts in coming forward as  
23 named Plaintiff, being involved in the litigation of this Lawsuit, including reviewing pleadings, and as  
24 consideration for a full, general, and comprehensive release of the Named Plaintiff’s General Released  
25 Claims. The Service Award amount payable to Plaintiff shall come exclusively from the Total Settlement  
26 Amount and is not to exceed \$5,000.

27          2.27    “Settlement” means the settlement of the Action between Plaintiff and Defendant, as set  
28 forth in this Settlement Agreement.



1           2.28   “Settlement Administrator” means Phoenix Settlement Administrators.

2           2.29   “Settlement Administrator Expenses” means the amount to be paid to the Settlement  
3 Administrator exclusively from the Total Settlement Amount, including the total costs, expenses, and fees  
4 of the Settlement Administrator. The amount is not to exceed \$18,000.

5           2.30   “Settlement Class” means all non-exempt hourly healthcare professionals employed by  
6 MGA Travel California, Inc. in California from September 20, 2015 through the date the Court enters an  
7 order granting preliminary approval of the settlement, who worked overtime in one or more workweeks  
8 in which s/he also received a weekly per diem. Anyone who signed a General Release of claims with  
9 MGA on or after their final day of employment with MGA shall not be included within the Settlement  
10 Class.

11           2.31   “Settlement Class Member” means any member of the Settlement Class.

12           2.32   “Settlement Class Members’ Released Claims” means any and all present and past claims  
13 under the wage and hour laws and regulations of the state of California arising directly or indirectly from  
14 Defendant’s failure to include the amount of the per diem in Settlement Class Members’ regular rate of  
15 pay for purposes of calculating overtime wages. For the sake of clarity, although the operative Complaint  
16 describes the specific employment agreement Plaintiff signed, the title and precise wording of Defendant’s  
17 form employment agreement changed over time. Accordingly, the Released Claims are not limited to  
18 those arising under the specific title or form of employment agreement signed by Plaintiff. The  
19 “Settlement Class Members’ Released Claims” are released from September 20, 2015 through and  
20 including the Preliminary Approval Date.

21           2.33   “Settlement Class Period” means September 20, 2015 through and including the  
22 Preliminary Approval Date.

23           2.34   “Total Settlement Amount” means the non-reversionary sum of Seven Hundred Fifty  
24 Thousand Dollars (\$750,000), for payment of all claims, which is the maximum amount that MGA is  
25 obligated to pay under this Settlement Agreement under any circumstances in order to resolve and settle  
26 the Action, subject to Court approval. The Total Settlement Amount includes all costs and fees, including,  
27 but not limited to, the Class Counsel Award, Settlement Administrator Expenses, escrow costs and  
28

1 expenses, and Service Awards. As a sole exception to the foregoing, MGA will separately pay any  
2 employer payroll taxes owed on the portion of the Individual Settlement Payments classified as wages.

3 2.35 “Void Date” means the date by which any checks issued to Settlement Class Members shall  
4 become void, *i.e.* on the 181st day after mailing.

5 **III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**  
6 **PRELIMINARY AND FINAL APPROVAL**

7 3.1 Upon execution of this Settlement Agreement, Plaintiff shall submit to the Court a motion  
8 for preliminary approval of the Settlement. The motion for preliminary approval shall include a proposed  
9 plan for sending of the Class Notice to Settlement Class Members within forty-five (45) days after the  
10 Preliminary Approval Date (the Notice Date), and establishing a period of sixty (60) days from the Notice  
11 Date within which any Settlement Class Member may (i) request exclusion from the Settlement Class, (ii)  
12 object to the proposed Settlement, or (iii) object to Class Counsel’s request for the Class Counsel Award  
13 and for the Service Awards to the Plaintiff (the Exclusion/Written Objection Deadline).

14 3.2 The Parties stipulate to certification under California Code of Civil Procedure section 382,  
15 for settlement purposes only, of the Settlement Class. The Parties agree that this stipulation shall not be  
16 admissible in, and may not be used by any person for any purpose whatsoever in any legal proceeding,  
17 including but not limited to any arbitrations and/or any civil and/or administrative proceedings, other than  
18 a proceeding to enforce the terms of the Agreement, as further set forth in this Agreement.

19 3.3 Class Counsel agrees to keep any and all data and other employment and personal  
20 information related to the Settlement Class in the strictest confidence, and shall not disclose that data.  
21 Any such data provided to Class Counsel shall be treated as privileged mediation communications under  
22 California Evidence Code section 1119 and designated “Confidential—Attorneys’ Eyes Only,” except to  
23 the extent absolutely necessary (as agreed between the Parties) for approval of the Settlement. Class  
24 Counsel agrees to submit such necessary data and information to the Court under seal to the extent  
25 appropriate under governing law. Nevertheless, should the Court not grant final approval of this  
26 settlement, the Parties understand and agree that they will meet and confer regarding use of the data in  
27 litigation, including for purposes of trial.

1           3.4     The Parties stipulate to the form of, and agree to submit to the Court for its consideration  
2 this Settlement Agreement, and the following Exhibits to this Settlement Agreement: Class Notice  
3 (Exhibit A); and [Proposed] Preliminary Approval Order (Exhibit B).

4           3.5     Solely for purposes of implementing this Agreement and effectuating the proposed  
5 Settlement, the Parties agree and stipulate that:

6           3.5.1   The Court may enter the Preliminary Approval Order, without material variation  
7 from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other things, the  
8 Preliminary Approval Order shall grant leave to preliminarily certify the Settlement Class for settlement  
9 purposes only; approve the Plaintiff as the class representative of the Settlement Class, appoint Class  
10 Counsel to represent the Settlement Class, and appoint the Settlement Administrator; approve the Class  
11 Notice, and the class notice plan embodied in the Settlement Agreement, and approve them as consistent  
12 with California Code of Civil Procedure section 382, California Rule of Court 3.769 and due process; set  
13 out the requirements for disputing the information upon which Settlement Class Members' share of the  
14 Settlement will be calculated, objecting to the Settlement, excluding Settlement Class Members who  
15 timely and properly request to be excluded from the Settlement Class, all as provided in this Agreement;  
16 and provide that certification and all actions associated with certification are undertaken on the condition  
17 that the certification and other actions shall be automatically vacated and of no force or evidentiary effect  
18 if this Agreement is terminated or disapproved, as provided in this Agreement.

19           3.6     At the Final Approval Hearing, Plaintiff shall request entry of a Final Approval order and  
20 a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this Settlement  
21 and that, among other things:

22           3.6.1   Finally approves the Settlement as fair, reasonable, and adequate and directs its  
23 consummation pursuant to the terms of the Settlement Agreement;

24           3.6.2   Finds that Class Counsel and Plaintiff adequately represented the Settlement Class  
25 for the purpose of entering into and implementing the Agreement;

26           3.6.3   Re-confirms the appointment of the Settlement Administrator and finds that the  
27 Settlement Administrator has fulfilled its duties under the Settlement to date;

1           3.6.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii) constituted  
2 notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of  
3 the pendency of the Action, and their right to exclude themselves from or object to the proposed settlement  
4 and to appear at the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and  
5 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of  
6 California Code of Civil Procedure section 382, California Rule of Court 3.769, due process, and any  
7 other applicable rules or law;

8           3.6.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete list  
9 of all Settlement Class Members who have timely and properly requested exclusion from the Settlement  
10 Class and, accordingly, shall neither share in nor be bound by the Final Approval order and Judgment;

11           3.6.6 Directs that the Final Approval order and Judgment of dismissal shall be final and  
12 entered forthwith;

13           3.6.7 Without affecting the finality of the Final Approval order and Judgment, directs  
14 that the Court retains continuing jurisdiction over Plaintiff, the Settlement Class, and MGA as to all  
15 matters concerning the administration, consummation, and enforcement of this Settlement Agreement;

16           3.6.8 Adjudges that, as of the Final Approval Date, Plaintiff, and all Settlement Class  
17 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List approved  
18 by the Court, and their Legally Authorized Representatives, heirs, estates, trustees, executors,  
19 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
20 claiming through them or acting or purporting to act for them or on their behalf, regardless of whether  
21 they have received actual notice of the proposed Settlement, have conclusively compromised, settled,  
22 discharged, and released the Named Plaintiff's General Released Claims (in the case of Plaintiff) and  
23 Settlement Class Members' Released Claims (in the case of the Settlement Class Members) against MGA  
24 and the Released Parties, and are bound by the provisions of this Agreement;

25           3.6.9 Declares this Agreement and the Final Approval order and Judgment to be binding  
26 on, and have res judicata and preclusive effect as to all pending and future lawsuits or other proceedings:  
27 (i) that encompass the Named Plaintiff's General Released Claims and that are maintained by or on behalf  
28 of Plaintiff and/or his Legally Authorized Representatives, heirs, estates, trustees, executors,

1 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
2 claiming through them or acting or purporting to act for them or on their behalf, and (ii) that encompass  
3 the Settlement Class Members' Released Claims and that are maintained by or on behalf of any Settlement  
4 Class Member who has not been excluded from the Settlement Class as provided in the Opt-Out List  
5 approved by the Court and/or their Legally Authorized Representatives, heirs, estates, trustees, executors,  
6 administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone  
7 claiming through them or acting or purporting to act for them or on their behalf, regardless of whether the  
8 Settlement Class Member previously initiated or subsequently initiates individual litigation or other  
9 proceedings encompassed by the Settlement Class Members' Released Claims, and even if such  
10 Settlement Class Member never received actual notice of the Action or this proposed Settlement;

11           3.6.10 Determines that the Agreement and the Settlement provided for herein, and any  
12 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed  
13 as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of  
14 the certifiability or non-certifiability of a litigation class, or of any misrepresentation or omission in any  
15 statement or written document approved or made by any Party; provided, however, that reference may be  
16 made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary  
17 to effectuate the provisions of this Agreement, as further set forth in this Agreement;

18           3.6.11 Orders that the preliminary approval of the Settlement, certification of the  
19 Settlement Class and final approval of the proposed Settlement, and all actions associated with them, are  
20 undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or  
21 disapproved in whole or in part by the Court, or by any appellate court and/or other court of review, in  
22 which event the Agreement and the fact that it was entered into shall not be offered, received, or construed  
23 as an admission or as evidence for any purpose, including but not limited to an admission by any Party of  
24 liability or non-liability or of any misrepresentation or omission in any statement or written document  
25 approved or made by any Party, or of the certifiability of a litigation class, as further provided in this  
26 Settlement Agreement;

27           3.6.12 Authorizes the Parties, without further approval from the Court, to mutually agree  
28 to and adopt such amendments, modifications, and expansions of this Agreement, including all Exhibits

1 hereto, as (i) shall be consistent in all material respects with the Final Approval order and (ii) do not limit  
2 the rights of Settlement Class Members; and

3 3.6.13 Contains such other and further provisions consistent with the terms of this  
4 Settlement Agreement to which the Parties expressly consent in writing.

5 3.7 At the Final Approval Hearing and as a part of the final approval of this Settlement, Class  
6 Counsel will also request approval of the Plan of Allocation set forth in Section V. Any modification to  
7 the Plan of Allocation by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii)  
8 provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any  
9 obligation on the Defendant or any Released Party to increase the consideration paid in connection with  
10 the Settlement.

11 3.8 At the Final Approval Hearing, Class Counsel may also request entry of an Order  
12 approving the Class Counsel Award and the Service Award to the Plaintiff, which shall be paid exclusively  
13 from the Total Settlement Amount and in accordance with the distribution plan described in Section V.  
14 In no event shall any Released Party otherwise be obligated to pay for any attorneys' fees and expenses  
15 or any Service Award. The disposition of Class Counsel's application for a Class Counsel Award, and  
16 for the Service Award, is within the sound discretion of the Court and is not a material term of this  
17 Settlement Agreement, and it is not a condition of this Settlement Agreement that such application be  
18 granted. Any disapproval or modification of such application by the Court shall not (i) affect the  
19 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the  
20 Settlement Agreement, or (iii) increase the consideration Defendant or any Released Party pays in  
21 connection with the Settlement. If the Court modifies the amount of the Class Counsel Award or Service  
22 Award to be lower than the maximum allocated to the Class Counsel Award/Service Award in the  
23 Agreement, then the difference shall be allocated to the Individual Settlement Payments, as set forth in  
24 the Plan of Allocation. Released Parties shall have no liability to Class Counsel arising from any claim  
25 regarding the division of the Class Counsel Award between and among Class Counsel or any other counsel  
26 representing Plaintiff or the Settlement Class Members.

27 3.9 In no event shall Defendant or any Released Party be obligated to pay Settlement  
28 Administrator Expenses beyond those provided for in this Agreement.

1 **IV. SETTLEMENT CONSIDERATION**

2 4.1 The total consideration for the Settlement from MGA is the Total Settlement Amount  
3 (\$750,000.00). The Total Settlement Amount is non-reversionary and an “all in” number that includes,  
4 without limitation, all monetary benefits and payments to the Settlement Class, Service Awards, Class  
5 Counsel Award, Settlement Administrator Expenses, and all claims for interest, fees, and costs. However,  
6 no part of the Total Settlement Amount may be used to pay any employer payroll taxes owed on the  
7 portion of the Individual Settlement Payments classified as wages. In no event shall MGA be liable for  
8 making any payments under this Settlement, or for providing any relief to Settlement Class Members,  
9 before the deadlines set forth in this Agreement.

10 4.2 Plaintiff and all Settlement Class Members who do not request exclusion will automatically  
11 receive an Individual Settlement Payment from the Total Settlement Amount without having to submit a  
12 claim form. One-third of the Individual Settlement Payment shall be issued as wages on an IRS Form W-  
13 2, 1/3 shall be issued as penalties on an IRS Form 1099, and 1/3 shall be issued as interest on an IRS Form  
14 1099. In the case of Plaintiff, the Service Award shall be considered entirely non-wages, and shall be  
15 memorialized with an IRS Form 1099. Defendant shall separately pay all employer payroll taxes required  
16 on the wage portion of each Individual Settlement Payment. However, Plaintiff and all Settlement Class  
17 Members who receive a payment of any kind from the Total Settlement Amount shall be responsible for  
18 paying their share of federal, state, and municipal taxes owed on such payments, if any.

19 4.3 The terms of this Agreement relating to the Service Award and Class Counsel Award were  
20 not negotiated by the Parties before full agreement was reached as to all other material terms of the  
21 proposed Settlement, including, but not limited to, any terms relating to the relief to the Settlement Class.  
22 MGA agrees not to oppose a request for the Service Award for Plaintiff, as awarded by the Court, up to a  
23 maximum of \$5,000. Plaintiff and Class Counsel agree not to seek any Service Award in excess of the  
24 above amount.

25 4.4 Class Counsel agrees not to seek an award from the Court in excess of thirty-three percent  
26 and one-third (33 1/3%) of the Total Settlement Amount in attorneys’ fees (\$250,000) nor in excess of  
27 \$5,000 in costs and expenses. MGA agrees not to oppose a request for attorneys’ fees, costs and expenses  
28 so long as it does not exceed the amounts set forth above. Any amount awarded as the Class Counsel

1 Award shall be inclusive of any and all amounts due to or claimed by any and all counsel representing  
2 Plaintiff in the Action. Released Parties and Settlement Class Members shall have no obligation regarding,  
3 or liability for, allocation or payment of the Class Counsel Award. Class Counsel shall file any request for  
4 attorneys' fees, costs and expenses and any request for Service Awards no later than 35 calendar days  
5 before the Final Approval Hearing.

6 4.5 The Settlement Administrator shall pay the Class Counsel Award from the Total Settlement  
7 Amount pursuant to the instructions of Class Counsel. Class Counsel shall provide the Settlement  
8 Administrator notice of receipt of the Class Counsel Award. Released Parties shall have no liability to  
9 Class Counsel or any other counsel for Plaintiff in the Action or any Settlement Class Member arising  
10 from any claim regarding the division of the Class Counsel Award.

## 11 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

12 5.1 Defendant shall provide the Total Settlement Amount to the Settlement Administrator  
13 within seven (7) calendar days of the Effective Date.

14 5.2 Subject to Court approval, the Total Settlement Amount shall be allocated to pay the  
15 Settlement Administrator Expenses (not to exceed \$18,000); Plaintiff's Service Award (not to exceed  
16 \$5,000); the Class Counsel Award (up to, but not to exceed, \$250,000 in fees and up to \$5,000 in costs)  
17 as ordered by the Court; and all remaining funds allocated to the Individual Settlement Payments.

18 5.3 With the sole exception of Plaintiff (who may receive a Service Award), Settlement Class  
19 Members are not eligible to receive any compensation from the Settlement other than the Individual  
20 Settlement Payment(s), and the Individual Settlement Payment shall total no less than \$25.00.

21 5.4 Each Settlement Class Member who does not request exclusion ("Remaining Settlement  
22 Class Members") shall be paid an amount calculated in direct proportion to MGA's best estimate of the  
23 Settlement Class Member's Overtime Hours Worked, as determined from the Class Information provided  
24 to the Settlement Administrator by MGA. To calculate the amount to be paid in proportion to Overtime  
25 Hours Worked, the Overtime Hours Worked of all Remaining Settlement Class Members will be totaled  
26 ("Total Overtime Hours Worked"). Each Remaining Settlement Class Member's Overtime Hours Worked  
27 will be divided by the Total Overtime Hours Worked and the quotient will be multiplied by the Net  
28 Settlement Amount. Class Counsel will be permitted to review and approve the calculation of settlement



1 funds to be distributed, provided that the information shared with Class Counsel contain solely a unique  
2 identifying number for each individual and their Overtime Hours Worked, but not contain any Settlement  
3 Class Member's name, social security number, last known address or other identifying information.

4 5.5 At no point shall any amount from the Total Settlement Amount revert back to Defendant.

## 5 **VI. CLASS NOTICE & OBJECTION PROCEDURES**

6 6.1 No more than fourteen (14) calendar days after entry of the Preliminary Approval Order,  
7 Defendant shall provide the Settlement Administrator with the Class Information for purposes of sending  
8 the Class Notice to Settlement Class Members.

9 6.2 The Class Notice will include a statement to each Settlement Class Member containing  
10 their Overtime Hours Worked being used to calculate the amount of their Settlement Payment as described  
11 in Paragraph 5.4, and inform Settlement Class Members of their right to request exclusion from the  
12 Settlement, object to the Settlement or dispute the information upon which their share of the Settlement  
13 will be calculated, and the claims to be released.

14 6.3 As set forth in the Class Notice, Settlement Class Members will be provided thirty (30)  
15 days after receiving the Class Notice and accompanying statement to disagree with MGA's calculation of  
16 their total Overtime Hours Worked by providing documentation to the Settlement Administrator. The  
17 Settlement Administrator shall review any documentation submitted by a Settlement Class Member and  
18 consult with the Parties to determine whether an adjustment is warranted. If the Settlement Class Member  
19 and the Parties cannot agree on whether an adjustment is warranted, the dispute shall be resolved by the  
20 Court at the Final Approval Hearing.

21 6.4 No more than thirty (30) calendar days after entry of the Preliminary Approval Order,  
22 provided Defendant timely complied with its obligation in Paragraph 6.1, the Settlement Administrator  
23 shall send a copy of the Class Notice by U.S. mail to each potential Settlement Class Member (the Notice  
24 Date). Before the initial mailing of the Class Notice, the Settlement Administrator shall make a good-  
25 faith attempt to obtain the most-current names and postal mail addresses for all potential Settlement Class  
26 Members to receive such postal mail, including (1) cross-checking the names and/or postal mail addresses  
27 it received from MGA, and (2) reviewing the addresses with the National Change of Address Database.

1           6.5     If any Class Notice sent via U.S. mail to any potential Settlement Class Member is returned  
2 to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the  
3 postal mailing to that address. If the Settlement Administrator is not provided a forwarding address, the  
4 Settlement Administrator shall attempt to locate a current mailing address for the Class Member by skip  
5 tracing using the Class Member’s SSN and will mail the Class Notice to the updated address identified.  
6 In the event that any Class Notice is returned as undeliverable a second time, or if no updated mailing  
7 address could be obtained, the Settlement Administrator shall email the Class Notice to the last known  
8 email address of the Class Member on file with Defendant. If no updated mailing address could be  
9 obtained after e-mailing the Class Notice, or if Defendant has no email address on file for that Class  
10 Member, the Class Member’s Individual Settlement Payment shall be deposited into the California State  
11 Controller’s Unclaimed Property fund pursuant to Paragraph 10.5. The Settlement Administrator shall  
12 maintain a log detailing the instances Class Notices are returned as undeliverable.

13           6.6     All Settlement Class Members’ names and postal mail addresses and email addresses  
14 obtained through these sources shall be protected as confidential and not used for purposes other than the  
15 notice and administration of this Settlement. The address determined by the Settlement Administrator as  
16 the current mailing address through this process shall be presumed to be the best mailing address for the  
17 applicable Settlement Class Member.

18           6.7     The Parties agree that the procedures set forth in this Section constitute reasonable and the  
19 best practicable notice under the circumstances and an appropriate and sufficient effort to locate current  
20 addresses for Settlement Class Members such that no additional efforts to do so shall be required.

21           6.8     At least forty (40) days before the Final Approval Hearing, the Settlement Administrator  
22 shall prepare a declaration of due diligence and proof of dissemination with regard to the mailing of the  
23 Class Notice, and any attempts by the Settlement Administrator to locate Settlement Class Members, its  
24 receipt of valid requests for exclusion, and its inability to deliver the Class Notice to Settlement Class  
25 Members due to invalid addresses (“Due Diligence Declaration”), to Class Counsel and counsel for MGA  
26 for presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration  
27 with the Court.  
28

1 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

2 7.1 Settlement Class Members (with the exception of Plaintiff) may opt out of the Settlement.  
3 Those who wish to exclude themselves (or “opt out”) from the Settlement Class must complete the opt-  
4 out form accompanying the Class Notice and return it to the Settlement Administrator at the address  
5 provided in the Class Notice no later than the Exclusion/Written Objection Deadline. The date of the  
6 postmark shall be the exclusive means used to determine whether a request for exclusion has been timely  
7 submitted. Requests for exclusion must be exercised individually by the Settlement Class Member.  
8 Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded  
9 by the Settlement Administrator. Under no circumstances shall Class Counsel solicit or otherwise  
10 encourage any Settlement Class Member to opt-out of the Settlement Class.

11 7.2 The Settlement Administrator shall promptly log each request for exclusion that it receives  
12 and provide copies of the log and all such requests for exclusion to counsel for MGA. Class Counsel shall  
13 be permitted access to the log if, and only if, necessary to resolve disputes arising from the administration  
14 of the Settlement.

15 7.3 The Settlement Administrator shall prepare a list of all persons who timely and properly  
16 requested exclusion from the Settlement Class (“the Opt-Out List”) and shall submit the Opt-Out List to  
17 Class Counsel and counsel for MGA as an exhibit to the Due Diligence Declaration.

18 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by the  
19 Court shall be bound by this Agreement, and their claims shall be released as provided for herein, even if  
20 they never received actual notice of the Action or this proposed Settlement.

21 7.5 Plaintiff agrees not to request exclusion from the Settlement Class.

22 7.6 Settlement Class Members may object to or opt out of the Settlement, but may not do both.  
23 Any Settlement Class Member who submits a timely and proper request for exclusion may not file an  
24 objection to the Settlement or receive a Settlement Payment, and shall be deemed to have waived any  
25 rights or benefits under the Settlement Agreement. If a Settlement Class Member files both an objection  
26 and a valid and timely request for exclusion, the request for exclusion will override the objection, and the  
27 objection shall therefore be ignored. Any dispute regarding the validity of an opt-out is to be resolved by  
28 the Court.

1 **VIII. PROCEDURES FOR OBJECTIONS**

2 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or  
3 adequacy of this Agreement or the proposed Settlement must complete the objection form accompanying  
4 the Class Notice and return it to the Settlement Administrator (who shall forward it to Class Counsel and  
5 counsel for MGA).

6 at the address provided in the Class Notice no later than the Exclusion/Written Objection  
7 Deadline. The date of the postmark on the return-mailing envelope or the filing date (respective  
8 of the method used) shall be the exclusive means used to determine whether an objection has been  
9 timely submitted.

10 8.2 Class Counsel will file with the Court any and all communications from Settlement Class  
11 Members which appear at all to object to the Settlement, regardless of whether the Parties deem the  
12 objection to be defective. Absent good cause found by the Court, any Settlement Class Member who does  
13 not submit a timely written objection in accordance with this Section shall waive the right to object to the  
14 proposed Settlement and shall be forever barred from making any objection to the proposed Settlement,  
15 the Plan of Allocation, the Class Counsel Award and the Service Award. Settlement Class Members who  
16 object to the proposed Settlement shall remain Settlement Class Members and subject to Settlement Class  
17 Members' Released Claims. Any dispute regarding the validity of an objection is to be resolved by the  
18 Court.

19 8.3 To the extent any Settlement Class Member objects to the proposed Settlement, and such  
20 objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the  
21 Final Approval order and Judgment.

22 8.4 It shall be Class Counsel's sole responsibility to respond to any objections made with  
23 respect to any application for the Class Counsel Award and Service Award.

24 **IX. RELEASES**

25 9.1 The Released Claims against each and all of the Released Parties shall be released with  
26 prejudice and on the merits (without an award of costs to any party other than as provided in this  
27 Agreement) upon entry of the Final Approval order and Judgment.  
28

1           9.2     As of the Final Approval Date, Plaintiff, and all Settlement Class Members who have not  
2 been excluded from the Settlement Class as provided in the Opt-Out List, individually and on behalf of  
3 their Legally Authorized Representatives, representatives, agents, successors, and assigns, and anyone  
4 claiming through them or acting or purporting to act on their behalf, agree to forever release, discharge,  
5 hold harmless, and covenant not to sue each and all of the Released Parties from each and all of the Named  
6 Plaintiff's General Released Claims (in the case of the Plaintiff) and the Settlement Class Members'  
7 Released Claims (in the case of the Settlement Class Members who have not been excluded from the  
8 Settlement Class as provided in the Opt-Out List), and by operation of the Final Judgment shall have fully  
9 and finally released, relinquished, and discharged all such claims against each and all of the Released  
10 Parties; and they further agree that they shall not now or hereafter initiate, maintain, or assert any Named  
11 Plaintiff's General Released Claims (in the case of Plaintiff) and any Settlement Class Members' Released  
12 Claims (in the case of the Settlement Class Members who have not been excluded from the Settlement  
13 Class as provided in the Opt-Out List), against the Released Parties in any other court action or before any  
14 administrative body, tribunal, arbitration panel, or other adjudicating body. Without in any way limiting  
15 the scope of the releases described in Paragraphs 2.15, 2.24, and 2.32, as well as the remainder of this  
16 Section, this release covers, without limitation, any and all claims for attorneys' fees, costs or  
17 disbursements incurred by Class Counsel or any other counsel representing Plaintiff in the Action or  
18 Settlement Class Members, or by Plaintiff or Settlement Class Members, or any of them, in connection  
19 with or related in any manner to the Action, the Settlement of the Action, the administration of such  
20 Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

21           9.3     As of the Final Approval Date, Plaintiff and all Settlement Class Members who have not  
22 been excluded from the Settlement Class as provided in the Opt-Out List shall be permanently barred and  
23 enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court  
24 or tribunal any and all Named Plaintiff's General Released Claims (in the case of Plaintiff) and any  
25 Settlement Class Members' Released Claims (in the case of the Settlement Class Members who have not  
26 been excluded from the Settlement Class as provided in the Opt-Out List,) arising during the Settlement  
27 Class Period, as further provided in Paragraphs 2.15, 2.24, and 2.32, as well as this Section.

1           9.4     Plaintiff expressly acknowledges that she is familiar with principles of law such as Section  
2 1542 of the California Civil Code, which provides:

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

9           9.5     With respect to the Named Plaintiff's General Released Claims, as described in Paragraph  
10 2.15, Plaintiff shall be deemed to have expressly, knowingly, and voluntarily waived and relinquished, to  
11 the fullest extent permitted by law, the provisions, rights, and benefits she may otherwise have had  
12 pursuant to Section 1542 of the California Civil Code and all similar federal or state laws, rights, rules, or  
13 legal principles of any other jurisdiction that may be applicable herein. In connection with the release,  
14 Plaintiff acknowledges that she is aware that she may hereafter discover claims presently unknown and  
15 unsuspected or facts in addition to or different from those which she now knows or believes to be true  
16 with respect to matters released herein. Nevertheless, Plaintiff acknowledges that a portion of the  
17 consideration received herein is for a release with respect to unknown damages and complaints, whether  
18 resulting from known injuries and consequences or from unknown injuries or unknown consequences of  
19 known or unknown injuries, and states that it is the intention of Plaintiff in agreeing to this release to fully,  
20 finally, and forever to settle and release all matters and all claims that exist, hereafter may exist, or might  
21 have existed (whether or not previously or currently asserted in any action), constituting Named Plaintiff's  
22 General Released Claims.

23           9.6     Plaintiff further acknowledges, agrees, and understands that: (i) she has read and  
24 understands the terms of this Agreement; (ii) she has been advised in writing to consult with an attorney  
25 before executing this Agreement; and (iii) she has obtained and considered such legal counsel as she  
26 deems necessary.

27           9.7     Subject to Court approval, the Plaintiff, and all Settlement Class Members to the extent  
28 they have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound by  
this Settlement Agreement, and all of their claims shall be released, even if they never received actual  
notice of the Action or this Settlement.

1 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

2 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties and  
3 subject to the supervision, direction, and approval of the Court, shall calculate the allocation of and oversee  
4 the distribution of the Total Settlement Amount.

5 10.2 The Total Settlement Amount shall be applied as follows:

6 10.2.1 To pay the total costs, expenses, and fees of the Settlement Administrator incurred  
7 in connection with providing Class Notice to potential Settlement Class Members, and the management  
8 and distribution of the Total Settlement Amount to Settlement Class Members, not to exceed \$18,000;

9 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiff's Service  
10 Award based on contributions and time expended assisting in the litigation, up to a maximum of \$5,000;

11 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class Counsel  
12 Award up to, but not to exceed, 33 1/3% of the Total Settlement Amount (\$250,000) and up to, but not to  
13 exceed, \$5,000 in costs, as ordered by the Court;

14 10.2.4 After the Effective Date and subject to the approval and further order(s) of the  
15 Court, to distribute the Individual Settlement Payments from the Total Settlement Amount for the benefit  
16 of the Settlement Class pursuant to Settlement Agreement, or as otherwise ordered by the Court.

17 10.3 Within thirty-five (35) days of the Effective Date, the Class Counsel Award and the Service  
18 Award approved by the Court, and the Settlement Administrator Expenses, shall be made by the  
19 Settlement Administrator from the amount provided to it by MGA.

20 10.4 The Settlement Administrator shall use reasonable efforts to disburse the Individual  
21 Settlement Payments to Settlement Class Members within sixty (60) days after the Effective Date,  
22 pursuant to the Plan of Allocation. If any Individual Settlement Payment is returned to the Settlement  
23 Administrator with a forwarding address, the Settlement Administrator shall forward the payment to that  
24 address. If the Settlement Administrator is not provided a forwarding address, the Settlement  
25 Administrator shall attempt to locate a current mailing address for the Class Member by skip tracing using  
26 the Class Member's SSN and will mail the payment to the updated address identified. In the event that  
27 any payment is returned as undeliverable a second time, no further efforts shall be required.  
28

1           10.5 If any portion included in the Individual Settlement Payments is not successfully  
2 distributed to Settlement Class Members after the initial Void Date (*i.e.* checks are not cashed or checks  
3 are returned as undeliverable after the initial distribution), then the Settlement Administrator shall void  
4 the check and shall deposit such unclaimed funds to the California State Controller's Unclaimed Property  
5 fund.

6           10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court shall be  
7 subject to and bound by the provisions of the Settlement Agreement, the releases contained herein, and  
8 the Judgment with respect to all Settlement Class Members' Released Claims, regardless of whether they  
9 obtained any distribution from the Total Settlement Amount.

10          10.7 Payment from the Total Settlement Amount made pursuant to and in the manner set forth  
11 herein shall be deemed conclusive of compliance with this Settlement Agreement as to all Settlement  
12 Class Members.

13          10.8 No Settlement Class Member shall have any claim against the Plaintiff, Class Counsel, or  
14 the Settlement Administrator based on distributions made substantially in accordance with this Settlement  
15 Agreement and/or orders of the Court. No Settlement Class Member shall have any claim against any  
16 Released Party or its counsel relating to distributions made under this Settlement.

17 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**  
18 **SETTLEMENT AGREEMENT**

19          11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement, or  
20 does not enter the Final Approval order and Judgment on the terms described herein, or if the Court enters  
21 the Judgment and appellate review is sought, and on such review, the entry of Judgment is vacated,  
22 modified in any way, or reversed, or if the Final Approval order does not otherwise become Final, then  
23 this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their sole discretion no  
24 later than thirty (30) days from the date such ruling becomes Final, provide written notice to all other  
25 Parties hereto of their intent to proceed with the Settlement under the terms of the Judgment as it may be  
26 modified by the Court or any appellate court.

27          11.2 Notwithstanding any other provision of this Settlement Agreement, if Settlement Class  
28 Members representing more than ten percent (10%) of the Overtime Hours Worked exercise their right to



1 opt out of the Settlement, Defendant at its sole and absolute discretion may elect to rescind and revoke the  
2 entire Settlement Agreement by sending written notice that it revokes the Settlement pursuant to this  
3 paragraph to Class Counsel within ten (10) business days following receipt of the Opt-Out List. Should  
4 Defendant exercise its rights under this Paragraph, Defendant shall be responsible for paying the  
5 Settlement Administrator's costs incurred up to the point of the revocation.

6       11.3     In the event that: (i) the Court denies, with prejudice, approval of the Settlement, (ii) the  
7 Court's approval of the Settlement is overturned on appeal, (iii) the Judgment does not become Final, or  
8 (iv) this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then:  
9 (a) the Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-Out List,  
10 and all documents exchanged and filed in connection with the Settlement shall be treated as privileged  
11 mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall be without  
12 force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable,  
13 with the exception of this Paragraph, which shall remain effective and enforceable; (c) the parties shall be  
14 deemed to have reverted nunc pro tunc to their respective status prior to execution of this Agreement,  
15 including with respect to any Court-imposed deadlines; (d) all Orders entered in connection with the  
16 Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any  
17 party's position on the issue of class certification, the issue of amending the complaint, or any other issue,  
18 in the Action or any other action, and the parties shall be restored to their litigation positions existing on  
19 the date of execution of this Agreement; and (e) the parties shall proceed in all respects as if the Settlement  
20 Agreement and related documentation and orders had not been executed, and without prejudice in any  
21 way from the negotiation or fact of the Settlement or the terms of the Settlement Agreement. The  
22 Settlement Agreement, the Settlement, all documents, orders, and evidence relating to the Settlement, the  
23 fact of their existence, any of their terms, any press release or other statement or report by the Parties or  
24 by others concerning the Settlement Agreement, the Settlement, their existence, or their terms, any  
25 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of the  
26 Settlement Agreement or the Settlement shall not be admissible in any proceeding, and shall not be  
27 offered, received, or construed as evidence of a presumption, concession, or an admission of liability, of  
28 the certifiability of a litigation class, or of any misrepresentation or omission in any statement or written

1 document approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of  
2 the Action or any other action or proceedings. Plaintiff, Class Counsel and the Settlement Administrator  
3 shall return to counsel for MGA all copies of Class Information and Opt-Out Lists and shall not use or  
4 disclose the Class Information or Opt-Out List for any purpose or in any proceeding.

5 MGA does not agree or consent to certification of the Settlement Class for any purpose other than  
6 to effectuate the Settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms,  
7 or the Effective Date for any reason does not occur, all Orders certifying the Settlement Class, and all  
8 preliminary and/or final findings regarding the Settlement Class certification order, shall be automatically  
9 vacated upon notice to the Court.

## 10 **XII. ADDITIONAL PROVISIONS**

11 12.1 Neither Plaintiff, Plaintiff's counsel, Defendant or Defendant's counsel shall engage in any  
12 publicity, including website or social media postings, of any type related to this lawsuit, settlement, or  
13 litigation against Defendant. The Parties understand and agree that this clause does not apply to any court  
14 order requiring Plaintiff's counsel publish and/or make case documents available to the public and/or  
15 prohibit Plaintiff and Plaintiff's counsel communicating with class members regarding this case and/or  
16 this settlement.

17 12.2 All of the Exhibits to this Agreement are an integral part of the Settlement and are  
18 incorporated by reference as though fully set forth herein.

19 12.3 Plaintiff and Class Counsel acknowledge that an adequate factual record has been  
20 established that supports the Settlement and hereby waive any right to conduct further discovery to assess  
21 or confirm the Settlement, except if required by Court Order.

22 12.4 Unless otherwise noted, all references to "days" in this Agreement shall be to calendar  
23 days. In the event any date or deadline set forth in this Agreement falls on a weekend or California court  
24 legal holiday, such date or deadline shall be on the first business day thereafter.

25 12.5 This Agreement constitutes the full and complete agreement of the Parties hereto, and  
26 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be amended  
27 or modified only by a written instrument signed by counsel for all Parties or the Parties' successors-in-  
28 interest.

1           12.6 The Parties reserve the right, subject to the Court’s approval, to make any reasonable  
2 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such  
3 extensions must be in writing to be enforceable.

4           12.7 The Settlement Agreement, the Settlement, the fact of the Settlement’s existence, any of  
5 terms of the Settlement Agreement, any public statement concerning the Settlement Agreement or the  
6 Settlement, and any negotiations, proceedings, acts performed, or documents executed pursuant to or in  
7 furtherance of the Settlement Agreement or the Settlement may not be used as evidence of any waiver of,  
8 unenforceability of, or as a defense to any MGA arbitration agreement.

9           12.8 The Released Parties shall have the right to file the Settlement Agreement, the Final  
10 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any  
11 action that may be brought against them in order to support a defense or counterclaim based on principles  
12 of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other  
13 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14           12.9 To the extent permitted by law, all agreements made and orders entered during the course  
15 of the Action relating to the confidentiality of information shall survive this Settlement Agreement.

16           12.10 The Parties agree that Plaintiff and Class Counsel are not required to return any documents  
17 produced by MGA until the final resolution of the Action. Within one year following the Effective Date,  
18 Class Counsel shall return to MGA all documents produced in the Action, or confirm in writing that all  
19 such documents have been destroyed. Any documents retained after the Effective Date shall be for the  
20 sole purpose of Class Counsel’s ethical obligations to keep a record of the work performed for their clients.

21           12.11 The waiver by one Party of any breach of this Settlement Agreement by any other Party  
22 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

23           12.12 This Settlement Agreement constitutes the entire agreement among the Parties, and no  
24 representations, warranties, or inducements have been made to any Party concerning this Settlement  
25 Agreement, other than the representations, warranties, and covenants contained and memorialized in this  
26 Settlement Agreement.

27           12.13 This Settlement Agreement may be executed in one or more counterparts and by facsimile,  
28 PDF, electronic, and/or DocuSign signatures. If Plaintiff executes the Settlement Agreement by electronic

1 signature, including Docusign or any comparable service, Class Counsel makes the following  
2 representations: (a) the electronic signature system and processes used to obtain Plaintiff's signature  
3 comply with the federal EISGN Act and any state laws regarding the use or adoption of electronic  
4 signatures, (b) Plaintiff consented to using electronic signatures for this purpose, as required under both  
5 the federal and state laws), (c) Class Counsel selected and implemented a method in their electronic  
6 signature system to authenticate Plaintiff to ensure the signature is Plaintiff's signature, (d) Class Counsel  
7 has and will maintain records of the system and the process used to present the agreement to Plaintiff and  
8 obtain and record Plaintiff's signature, and will maintain and provide such records to counsel for MGA to  
9 allow counsel for MGA to lay the foundation for the admission of the settlement agreement into evidence,  
10 (e) Plaintiff and Class Counsel waive any objections to the admission of the agreement in any later action  
11 to enforce the terms of the agreement based on the electronic signature process, and (f) Class Counsel  
12 agrees to indemnify and hold MGA harmless from any loss, cost, damage or expense (including attorneys'  
13 fees) resulting from our MGA's inability to enforce the agreement and release against their client. All  
14 executed counterparts and copies thereof shall be deemed to be one and the same instrument.

15       12.14 The Parties hereto and their respective counsel agree that they will use their best efforts to  
16 obtain all necessary approvals of the Court required by this Settlement Agreement.

17       12.15 This Settlement Agreement shall be binding upon and shall inure to the benefit of the  
18 successors and assigns of the Parties hereto, including any and all Released Parties and any corporation,  
19 partnership, or other entity into or with which any Released Party hereto may merge, consolidate, or  
20 reorganize.

21       12.16 This Settlement Agreement shall not be construed more strictly against one Party than  
22 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it  
23 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement, all  
24 Parties hereto have contributed substantially and materially to the preparation of the Settlement  
25 Agreement.

26       12.17 Except where this Settlement Agreement itself provides otherwise, all terms, conditions,  
27 and Exhibits are material and necessary to this Settlement Agreement and have been relied upon by the  
28 Parties in entering into this Settlement Agreement.

1           12.18 This Settlement Agreement shall be governed by California law. Any action based on this  
2 Settlement Agreement, or to enforce any of its terms, shall be venued in Orange County Superior Court,  
3 which shall retain jurisdiction over all such disputes. All Parties to this Settlement Agreement shall be  
4 subject to the jurisdiction of Orange County Superior Court for all purposes related to this Settlement  
5 Agreement. This paragraph relates solely to the law governing this Settlement Agreement and any action  
6 based thereon, and nothing in this paragraph shall be construed as an admission or finding that California  
7 law applies to the Released Claims of any Plaintiff or Settlement Class Members who reside outside of  
8 the state.

9           12.19 The Court shall retain continuing and exclusive jurisdiction over the Parties to this  
10 Settlement Agreement for the purpose of the administration and enforcement of this Settlement  
11 Agreement.

12           12.20 The headings used in this Settlement Agreement are for the convenience of the reader only,  
13 and shall not affect the meaning or interpretation of this Settlement Agreement.

14           12.21 In construing this Settlement Agreement, the use of the singular includes the plural (and  
15 vice-versa) and the use of the masculine includes the feminine (and vice-versa).

16           12.22 Each Party to this Settlement Agreement warrants that he, she, they, or it is acting upon  
17 independent judgment and upon the advice of counsel, and not in reliance upon any warranty or  
18 representation, express or implied, of any nature of any kind by any other Party, other than the warranties  
19 and representations expressly made in this Settlement Agreement.

20           12.23 Each counsel signing this Settlement Agreement on behalf of their clients who are unable  
21 to sign the Agreement on the date that it is executed by other Parties represents that such counsel is fully  
22 authorized to sign this Settlement Agreement on behalf of their clients; provided, however, that all Parties  
23 who have not executed this Agreement on the date that it is executed by the other Parties shall promptly  
24 thereafter execute this Agreement and in any event no later than one (1) week after the Agreement has  
25 been executed by counsel.

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Dated: May 24, 2021

By: ~~\_\_\_\_~~  
AUTUMN COBBS  
PLAINTIFF

HAYES PAWLENKO LLP

Dated: May 25, 2021

By: *Kye Pawlenko*  
KYE PAWLENKO  
COUNSEL FOR PLAINTIFF

Dated: May \_\_, 2021

By: \_\_\_\_\_  
IVAN HANNEL  
MGA TRAVEL CALIFORNIA, INC.

LITTLER MENDELSON P.C.

Dated: May \_\_, 2021

By: \_\_\_\_\_  
MARLENE MURACO  
COUNSEL FOR DEFENDANT

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Dated: May \_\_, 2021

By: \_\_\_\_\_  
AUTUMN COBBS  
PLAINTIFF

HAYES PAWLENKO LLP

Dated: May \_\_, 2021

By: \_\_\_\_\_  
KYE PAWLENKO  
COUNSEL FOR PLAINTIFF

Dated: May <sup>31</sup> \_\_, 2021

DocuSigned by:  
*Ivan Hannel*  
By: \_\_\_\_\_  
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IVAN HANNEL  
MGA TRAVEL CALIFORNIA, INC.

LITTLER MENDELSON P.C.

Dated: May \_\_, 2021

By: \_\_\_\_\_  
MARLENE MURACO  
COUNSEL FOR DEFENDANT

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Dated: May \_\_, 2021

By: \_\_\_\_\_  
AUTUMN COBBS  
PLAINTIFF

HAYES PAWLENKO LLP

Dated: May \_\_, 2021


By: \_\_\_\_\_  
KYE PAWLENKO  
COUNSEL FOR PLAINTIFF

Dated: May \_\_, 2021

By: \_\_\_\_\_  
IVAN HANNEL  
MGA TRAVEL CALIFORNIA, INC.

LITTLER MENDELSON P.C.

Dated: May 30, 2021

By:  \_\_\_\_\_  
MARLENE MURACO  
COUNSEL FOR DEFENDANT