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19 Attorneys for Plaintiff

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF ALAMEDA**

22 ABIGAIL MCMURRY, an individual(s), on
23 behalf of herself and on behalf of all persons
24 similarly situated,

25 Plaintiff,

26 v.

27 NVN MANAGEMENT LLC dba ARBOR
28 LODGING MANAGEMENT and NVN
HOTELS, a Delaware limited liability
company; ARBOR LODGING PARTNERS
LLC, an Illinois limited liability company;
NVN SAN LEANDRO, LLC, a Delaware
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No.: 23CV028220

[Action Filed February 21, 2023]

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

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between Plaintiff ABIGAIL MCMURRY (hereinafter “Plaintiff”), individually,
3 on behalf of herself and on behalf of all persons similarly situated, and Defendants NVN
4 MANAGEMENT LLC dba ARBOR LODGING MANAGEMENT and NVN HOTELS, ARBOR
5 LODGING PARTNERS LLC, and NVN SAN LEANDRO, LLC (hereinafter “Defendants”) (together
6 the “Parties”):

7 **I. DEFINITIONS**

- 8 A. “Action” shall mean the putative class action lawsuit designated *Abigail McMurry v.*
9 *NVN Management LLC, et al.*, Alameda County Superior Court, Case No.
10 23CV028220, filed February 21, 2023.
- 11 B. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
12 Class and PAGA Action and Release of Claims.
- 13 C. “Aggrieved Employees” means all non-exempt employees who are or previously
14 were employed by Defendants and performed work at the Hilton Garden Inn located
15 at 510 Lewelling Boulevard, San Leandro in California during the PAGA Period.
- 16 D. “Attorneys’ Expenses” means the award of expenses that the Court authorizes to be
17 paid to Class Counsel for the expenses they have incurred of up to \$20,000.
- 18 E. “Attorneys’ Fees” means the award of fees that the Court authorizes to be paid to
19 Class Counsel for the services they have rendered to Plaintiff and the Settlement
20 Class in the Action, currently not to exceed one-third of the Gross Settlement
21 Amount currently estimated to be \$89,000.00 out of \$267,000.00. Attorneys’ fees
22 will be divided between Class Counsel as follows (50% to JCL Law Firm, APC, and
23 50% to Zakay Law Group, APLC).
- 24 F. “Claims Administration Expenses” shall mean the amount paid to the Settlement
25 Administrator from the Gross Settlement Amount for administering the Settlement
26 pursuant to this Agreement currently estimated not to exceed \$7,000.00.
- 27 G. “Class” or the “Class Members” means all non-exempt employees who are or
28 previously were employed by Defendants and performed work at the Hilton Garden

1 Inn located at 510 Lewelling Boulevard, San Leandro in California during the Class
2 Period.

3 H. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and
4 Shani Zakay of Zakay Law Group, APLC.

5 I. "Class Data" means information regarding Class Members that Defendants will in
6 good faith compile from its records and provide to the Settlement Administrator. It
7 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
8 Member's full name; last known address; Social Security Number; start dates and end
9 dates of employment.

10 J. "Class Period" means the period from February 21, 2019 to November 20, 2023.

11 K. "Class Representative" shall mean Abigail McMurry.

12 L. "Court" means the Superior Court for the State of California, County of Alameda
13 currently presiding over the Action.

14 M. "Defendants" shall mean NVN Management LLC dba Arbor Lodging Management
15 and NVN Hotels, Arbor Lodging Partners LLC, and NVN San Leandro, LLC.

16 N. "Effective Date" means the date of final approval if no objections are filed to the
17 settlement. If objections are filed and overruled, and no appeal is taken of the final
18 approval order, then the effective date of final approval will be the date the Court
19 enters the order and judgment granting final approval of the settlement. If an appeal
20 is taken from the Court's overruling of objections to the settlement, then the effective
21 date of final approval will be twenty (20) days after the appeal is withdrawn or after
22 an appellate decision affirming the final approval decision becomes final.

23 O. "Funding Date" shall mean the date by which Defendants have paid the entire Gross
24 Settlement Amount to the Claims Administrator in accord with the terms of this
25 Agreement.

26 P. "Gross Settlement Amount" means Two Hundred Sixty-Seven Thousand Dollars and
27 Zero Cents (\$267,000.00) that Defendants must pay into the QSF in connection with
28 this Settlement, inclusive of the sum of Individual Settlement Payments, Claims

1 Administration Expenses, Attorneys' Fees and Attorneys' Expenses, Service Award,
2 and the PAGA Payment and *exclusive* of the employer's share of payroll tax, if any,
3 triggered by any payment under this Settlement.

4 Q. "Individual Settlement Payments" means the amount payable from the Net Settlement
5 Amount to each Settlement Class Member and excludes any amounts distributed to
6 Aggrieved Employees pursuant to PAGA.

7 R. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less
8 Attorneys' Fees and Attorneys' Expenses, Service Award, PAGA Payment, and
9 Claims Administration Expenses.

10 S. "Notice Packet" means the Class Notice to be provided to the Class Members by the
11 Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other
12 than formatting changes to facilitate printing by the Settlement Administrator).

13 T. "Operative Complaint" shall mean the Complaint on file in the Action filed on
14 February 21, 2023.

15 U. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
16 Labor Code § 2698 *et seq.*

17 V. "PAGA Payment Ratio" means the respective workweeks during the PAGA Period
18 that each Aggrieved Employee worked for Defendants divided by the sum total of the
19 workweeks that all Aggrieved Employees worked for Defendants during the PAGA
20 Period.

21 W. "PAGA Payment" shall mean Twelve Thousand Dollars (\$12,000) to be allocated
22 from the Gross Settlement Amount, with 25% of the payment going to the Aggrieved
23 Employees and 75% of the payment going to the Labor and Workforce Development
24 Agency. The amount of the PAGA Payment is subject to Court approval pursuant to
25 California Labor Code section 2699(l). Any reallocation of the Gross Settlement
26 Amount to increase the PAGA Payment will not constitute grounds by either party to
27 void this Agreement, so long as the Gross Settlement Amount remains the same.

28 X. "PAGA Period" means the period from December 14, 2021 to November 20, 2023.

- 1 Y. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
2 Plaintiff or Defendants, individually.
- 3 Z. "Payment Ratio" means the respective Workweeks for each Class Member divided
4 by the sum total Workweeks for all Class Members.
- 5 AA. "Plaintiff" shall mean Abigail McMurry.
- 6 BB. "QSF" means the Qualified Settlement Fund established, designated, and maintained
7 by the Settlement Administrator to fund the Gross Settlement Amount.
- 8 CC. "Released Class Claims" shall mean the release from the Class Members of all class
9 claims alleged, or reasonably could have been alleged based on the facts alleged, in
10 the operative Complaint in the *McMurry v. NVN Management LLC, et al.* action
11 which occurred during the Class Period, and expressly excluding unrelated claims,
12 including claims for vested benefits, wrongful termination, unemployment insurance,
13 disability, social security, workers' compensation, and class claims outside of the
14 Class Period.
- 15 DD. "Released PAGA Claims" shall mean the release from the Aggrieved Employees of
16 all PAGA claims alleged in the operative Complaint in the *McMurry v. NMN*
17 *Management LLC, et al.* matter and Plaintiff's PAGA notice to the LWDA which
18 occurred during the PAGA Period, and expressly excluding unrelated claims,
19 including claims for vested benefits, wrongful termination, unemployment insurance,
20 disability, social security, workers' compensation and PAGA claims outside the
21 PAGA Period.
- 22 EE. "Released Parties" shall mean Defendants and any other person or entity associated
23 with Defendants, present, future, or former, known or unknown, whom the Plaintiff
24 might claim to be liable, including, but not limited to any of Defendants' parent
25 corporations, subsidiaries, divisions, affiliates, partners, shareholders, members,
26 employees, agents, directors, officers, attorneys, landlords, licensees, lessors,
27 insurers, reinsurers, employee benefit plans and plan fiduciaries, representatives,
28 predecessors, successors, assigns, transferees, heirs, executors, administrators, and

1 related entities, and all other persons, firms, corporations, associations, partnerships,
2 or entities having any legal relationship to each other.

3 FF. "Response Deadline" means the date forty-five (45) calendar days after the Settlement
4 Administrator first mails Notice Packets to Class Members and the last date on which
5 Class Members may submit requests for exclusion or objections to the Settlement.

6 GG. "Service Award" mean an award in the amount of \$10,000 or in an amount that the
7 Court authorizes to be paid to the Class Representative, in addition to her Individual
8 Settlement Payment and her individual Aggrieved Employee Payment, in recognition
9 of her efforts and risks in assisting with the prosecution of the Action.

10 HH. "Settlement" means the disposition of the Action pursuant to this Agreement.

11 II. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,
12 Suite 164 Irvine, CA 92618; Tel: 1-800-355-0700. The Settlement Administrator
13 establishes, designates and maintains, as a QSF under Internal Revenue Code section
14 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross
15 Settlement Amount is deposited for the purpose of resolving the claims of Settlement
16 Class Members. The Settlement Administrator shall maintain the funds until
17 distribution in an account(s) segregated from the assets of Defendants and any person
18 related to Defendants. *All accrued interest shall be paid and distributed to the*
19 *Settlement Class Members as part of their respective Individual Settlement*
20 *Payment.*

21 JJ. "Settlement Class Members" or "Settlement Class" means all Class Members who
22 have not submitted a timely and valid request for exclusion as provided in this
23 Agreement.

24 KK. "Workweeks," or "Workweek" as used herein shall, mean any seven (7) consecutive
25 days beginning on Sunday and ending on Saturday, in which a Class Member is
26 employed and received any form of compensation from Defendants, and excluding
27 any weeks of employment in which a Class Member did not perform work.

28

1 **II. RECITALS**

2 A. On December 14, 2022, Plaintiff filed a Notice of Violations with the Labor and
3 Workforce Development Agency (LWDA) and served the same on Defendants.

4 B. On February 21, 2023, Plaintiff filed the Action, alleging claims for:

- 5 1. Unfair competition in violation of Cal. Bus. & Prof. Code § 17200 *et seq*;
- 6 2. Failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197
7 & 1197.1;
- 8 3. Failure to pay overtime wages in violation of Cal. Lab. Code §§ 510 *et seq*;
- 9 4. Failure to provide required meal periods in violation of Cal. Lab. Code §§
10 226.7 & 512 and the applicable IWC Wage Order;
- 11 5. Failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7
12 & 512 and the applicable IWC Wage Order;
- 13 6. Failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202
14 and 203;
- 15 7. Failure to provide accurate itemized statements in violation of Cal. Lab. Code
16 § 226;
- 17 8. Violation of the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*).

18 C. Plaintiff believes she has claims based on alleged violations of the California Labor
19 Code, and the Industrial Welfare Commission Wage Orders, and that class
20 certification is appropriate because the prerequisites for class certification can be
21 satisfied in the Action, and this action is manageable as a PAGA representative action.

22 D. Defendants deny any liability or wrongdoing of any kind associated with the claims
23 alleged in the Action, dispute any wages, damages and penalties claimed by the Class
24 Representative are owed, and further contend that, for any purpose other than
25 settlement, the Action is not appropriate for class or representative action treatment.
26 Defendants contend, among other things, that at all times they complied with the
27 California Labor Code and the Industrial Welfare Commission Wage Orders.

28

1 E. The Class Representative is represented by Class Counsel. Class Counsel investigated
2 the facts relevant to the Action, including conducting an independent investigation as
3 to the allegations, reviewing documents and information exchanged through informal
4 discovery, and reviewing documents and information provided by Defendants
5 pursuant to informal requests for information to prepare for mediation. Defendants
6 produced for the purpose of settlement negotiations certain employment data
7 concerning the Settlement Class, which Class Counsel reviewed and analyzed with
8 the assistance of an expert. Based on their own independent investigation and
9 evaluation, Class Counsel are of the opinion that the Settlement with Defendants is
10 fair, reasonable, and adequate, and is in the best interest of the Settlement Class
11 considering all known facts and circumstances, including the risks of significant
12 delay, defenses asserted by Defendants, uncertainties regarding class certification,
13 and numerous potential appellate issues. Although they deny any liability, Defendants
14 are agreeing to this Settlement solely to avoid the inconveniences and cost of further
15 litigation. The Parties and their counsel have agreed to settle the claims on the terms
16 set forth in this Agreement.

17 F. On September 21, 2023, the Parties participated in mediation presided over by Hon.
18 Brian C. Walsh (Ret.), a respected jurist and experienced mediator of wage and hour
19 class and PAGA actions. The mediation concluded with a settlement, which was
20 subsequently memorialized in the form of a Memorandum of Understanding.

21 G. This Agreement replaces and supersedes the Memorandum of Understanding and any
22 other agreements, understandings, or representations between the Parties. This
23 Agreement represents a compromise and settlement of highly disputed claims.
24 Nothing in this Agreement is intended or will be construed as an admission by
25 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
26 or that Defendants bear any liability to Plaintiff or the Class on those claims or any
27 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action
28 have merit.

1 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
2 Settlement was arrived at through arm's-length negotiations, taking into account all
3 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
4 attendant to continuing the Action through trial and any appeal. Accordingly, the
5 Parties desire to settle, compromise and discharge all disputes and claims arising from
6 or relating to the Action fully, finally, and forever.

7 I. The Parties agree to certification of the Class for purposes of this Settlement only. If
8 for any reason the settlement does not become effective, Defendants reserve the right
9 to contest certification of any class for any reason and reserves all available defenses
10 to the claims in the Action.

11 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

12 **III. TERMS OF AGREEMENT**

13 A. Settlement Consideration and Settlement Payments by Defendants.

14 1. Settlement Consideration. In full and complete settlement of the Action, and
15 in exchange for the releases set forth below, Defendants will pay the sum of
16 the Individual Settlement Payments, the Service Award, the Attorneys' Fees
17 and Attorneys' Expenses, PAGA Payment, and the Claims Administration
18 Expenses, as specified in this Agreement, equal to the Gross Settlement
19 Amount of Two Hundred Sixty-Seven Thousand Dollars and Zero Cents
20 (\$267,000.00). The Parties agree that this is a non-reversionary Settlement and
21 that no portion of the Gross Settlement Amount shall revert to Defendants.
22 Other than the Defendants' share of employer payroll taxes and as provided
23 in Section III.A.2 below, Defendants shall not be required to pay more than
24 the Gross Settlement Amount.

25 2. Class Size. Defendants represent that the Settlement Class was comprised of
26 approximately 110 individuals who collectively worked approximately 6,673
27 workweeks ("Projected Workweeks") as of the mediation date of September
28 21, 2023. One week prior to Plaintiff's deadline to file her Motion for

1 Preliminary Approval of the Settlement, Defendants shall provide updated
2 data confirming the number of applicable Class Members and Workweeks
3 they worked during the applicable Class Period. If the Projected Workweeks
4 increases by more than 10% of the estimated stated herein, the Gross
5 Settlement Amount shall increase proportionally for the number of
6 workweeks over 110% of the Projected Workweeks. For example, if the total
7 Workweeks in the Class Period are 115% of 6,673, the Gross Settlement
8 Amount shall increase by 5%.

9 3. Settlement Payment. Defendants shall deposit the Gross Settlement Amount
10 into the QSF, through the Settlement Administrator by the Funding Date. Any
11 interest accrued will be added to the NSA and distributed to the Settlement
12 Class Members except that if final approval is reversed on appeal, then
13 Defendants is entitled to prompt return of the principal and all interest accrued.

14 4. Defendants' Share of Payroll Taxes. Defendants' share of employer side
15 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
16 together with the Gross Settlement Amount on the Funding Date.

17 B. Release by Settlement Class Members. Upon entry of final judgment and funding of
18 the Gross Settlement Amount, in exchange for the consideration set forth in this
19 Agreement, Plaintiff and the Settlement Class Members release the Released Parties
20 from the Released Class Claims for the Class Period.

21 C. Release by the Aggrieved Employees. Upon entry of final judgment and funding of
22 the Gross Settlement Amount, in exchange for the consideration set forth in this
23 Agreement, the Plaintiff, the LWDA and the State of California release the Released
24 Parties from the Released PAGA Claims for the PAGA Period. As a result of this
25 release, the Aggrieved Employees shall be precluded from bringing claims against
26 Defendants for the Released PAGA Claims.

27 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth in
28 this Agreement, Plaintiff waives, releases, acquits and forever discharges the Released

1 Parties from any and all claims, whether known or unknown, which exist or may exist
2 on either Plaintiff's behalf as of the date of this Agreement, including but not limited
3 to any and all tort claims, contract claims, wage claims, wrongful termination claims,
4 disability claims, benefit claims, public policy claims, retaliation claims, statutory
5 claims, personal injury claims, emotional distress claims, invasion of privacy claims,
6 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising
7 under any federal, state or other governmental statute, law, regulation or ordinance,
8 including, but not limited to claims for violation of the Fair Labor Standards Act, the
9 California Labor Code, the Wage Orders of California's Industrial Welfare
10 Commission, other state wage and hour laws, the Americans with Disabilities Act, the
11 Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
12 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment
13 and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
14 California's Whistleblower Protection Act, California Business & Professions Code
15 Section 17200 et seq., and any and all claims arising under any federal, state or other
16 governmental statute, law, regulation or ordinance. Plaintiff also waives and
17 relinquishes any and all claims, rights or benefits that she may have under California
18 Civil Code § 1542, which provides as follows:

19
20 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
21 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
22 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
23 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
24 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***
25 ***OR RELEASED PARTY.***

26
27 Thus, notwithstanding the provisions of section 1542, and to implement a full and
28 complete release and discharge of the Released Parties, Plaintiff expressly

1 acknowledges this Settlement Agreement is intended to include in its effect, without
2 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
3 the time of signing this Settlement Agreement, and that this Settlement Agreement
4 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
5 has read this Settlement Agreement, including this waiver of California Civil Code
6 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
7 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
8 about the waiver of section 1542, and that Plaintiff understands this Settlement
9 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
10 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
11 discover facts different from or in addition to those Plaintiff now knows or believes to
12 be true regarding the matters released or described in this Settlement Agreement, and
13 even so Plaintiff agrees that the releases and agreements contained in this Settlement
14 Agreement shall remain effective in all respects notwithstanding any later discovery
15 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
16 mistake in connection with the true facts involved in the matters, disputes, or
17 controversies released or described in this Settlement Agreement or with regard to any
18 facts now unknown to Plaintiff relating thereto.

19 E. Conditions Precedent: This Settlement will become final and effective only upon the
20 occurrence of all of the following events:

- 21 1. The Court enters an order granting preliminary approval of the Settlement;
- 22 2. The Court enters an order granting final approval of the Settlement and a Final
23 Judgment;
- 24 3. If an objector appears at the final approval hearing, the time for appeal of the
25 Final Judgment and Order Granting Final Approval of Class Action
26 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
27 any appeal from the Judgment and Order Granting Final Approval of Class
28 Action Settlement; and

1 4. Defendants fully fund the Gross Settlement Amount.

2 F. Nullification of Settlement Agreement. If this Settlement Agreement is not
3 preliminarily or finally approved by the Court, fails to become effective, or is reversed,
4 withdrawn or modified by the Court, or in any way prevents or prohibits Defendants
5 from obtaining a complete resolution of the Released Claims, or if Defendants fail to
6 fully fund the Gross Settlement Amount:

7 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
8 and shall not be admissible in any judicial, administrative or arbitral
9 proceeding for any purpose or with respect to any issue, substantive or
10 procedural;

11 2. The conditional class certification (obtained for any purpose) shall be void *ab*
12 *initio* and of no force or effect, and shall not be admissible in any judicial,
13 administrative or arbitral proceeding for any purpose or with respect to any
14 issue, substantive or procedural; and

15 3. None of the Parties to this Settlement will be deemed to have waived any
16 claims, objections, defenses or arguments in the Action, including with respect
17 to the issue of class certification.

18 4. Defendants shall bear the sole responsibility for any cost to issue or reissue
19 any curative notice to the Settlement Class Members and all Claims
20 Administration Expenses incurred to the date of nullification if the Agreement
21 is nullified due to Defendants' failure to fully fund the Gross Settlement
22 Amount. If the Agreement is nullified for any other reason, both Parties shall
23 equally bear the responsibility for any cost to issue or reissue any curative
24 notice to the Settlement Class Members and all Claims Administration
25 Expenses incurred to the date of nullification.

26 G. Option to Cancel Settlement Agreement. If 10% or more of the Class excludes
27 themselves from the Settlement, Defendants shall have the option to cancel the
28

1 Settlement Agreement. Defendants shall not induce or influence Class Members to
2 exclude themselves from the Settlement.

3 H. Certification of the Settlement Class. The Parties stipulate to conditional class
4 certification of the Class for the Class Period for purposes of settlement only. In the
5 event that this Settlement is not approved by the Court, fails to become effective, or is
6 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
7 Defendants from obtaining a complete resolution of the Released Claims, the
8 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
9 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
10 proceeding for any purpose or with respect to any issue, substantive or procedural.

11 I. Tax Liability. The Parties make no representations as to the tax treatment or legal
12 effect of the payments called for, and Class Members and/or Aggrieved Employees are
13 not relying on any statement or representation by the Parties in this regard. Class
14 Members and/or Aggrieved Employees understand and agree that they will be
15 responsible for the payment of any taxes and penalties assessed on the Individual
16 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
17 Employee Payment described and will be solely responsible for any penalties or other
18 obligations resulting from their personal tax reporting of Individual Settlement
19 Payments and/or Aggrieved Employees' individual shares of the Aggrieved
20 Employees Payment.

21 J. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
22 the "acknowledging party" and each Party to this Agreement other than the
23 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
24 of this Agreement, and no written communication or disclosure between or among the
25 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
26 such communication or disclosure constitute or be construed or be relied upon as, tax
27 advice within the meaning of United States Treasury Department circular 230 (31 CFR
28 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,

1 her or its own, independent legal and tax counsel for advice (including tax advice) in
2 connection with this Agreement, (b) has not entered into this Agreement based upon
3 the recommendation of any other Party or any attorney or advisor to any other Party,
4 and (c) is not entitled to rely upon any communication or disclosure by any attorney
5 or adviser to any other party to avoid any tax penalty that may be imposed on the
6 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
7 any limitation that protects the confidentiality of any such attorney's or adviser's tax
8 strategies (regardless of whether such limitation is legally binding) upon disclosure by
9 the acknowledging party of the tax treatment or tax structure of any transaction,
10 including any transaction contemplated by this Agreement.

11 K. Preliminary Approval Motion. As soon as practicable, Plaintiff shall file with the Court
12 a Motion for Order Granting Preliminary Approval and supporting papers, which shall
13 include this Settlement Agreement. Plaintiff will provide Defendants with a draft of
14 the Motion at least 3 business days prior to the filing of the Motion to give Defendants
15 an opportunity to propose changes or additions to the Motion.

16 L. Settlement Administrator. The Settlement Administrator shall be responsible for:
17 establishing and administering the QSF; calculating, processing and mailing payments
18 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
19 mailing the Notice Packets to the Class Members as directed by the Court; receiving
20 and reporting the objections and requests for exclusion; calculating, deducting and
21 remitting all legally required taxes from Individual Settlement Payments and
22 distributing tax forms for the Wage Portion, the Penalties Portion and the Interest
23 Portion of the Individual Settlement Payments and/or Aggrieved Employees'
24 individual shares of the Aggrieved Employee Payment; processing and mailing tax
25 payments to the appropriate state and federal taxing authorities; providing
26 declaration(s) as necessary in support of preliminary and/or final approval of this
27 Settlement; and other tasks as the Parties mutually agree or the Court orders the
28 Settlement Administrator to perform. The Settlement Administrator shall keep the

1 Parties timely apprised of the performance of all Settlement Administrator
2 responsibilities by among other things, sending a weekly status report to the Parties'
3 counsel stating the date of the mailing, the of number of Elections Not to Participate
4 in Settlement it receives (including the numbers of valid and deficient), and number of
5 objections received.

6 M. Notice Procedure.

7 1. Class Data. No later than ten (10) business days after the Preliminary
8 Approval Date, Defendants shall provide the Settlement Administrator with
9 the Class Data for purposes of preparing and mailing Notice Packets to the
10 Class Members. The Class Data will be presumed to be correct unless a
11 particular Class Member proves otherwise to the Settlement Administrator by
12 credible written evidence. All Workweek disputes will be resolved and
13 decided by the Settlement Administrator, and the Settlement Administrator's
14 decision on all Workweek disputes is final and non-appealable.

15 2. Notice Packets.

16 a) The Notice Packet shall contain the Notice of Class Action Settlement
17 in a form substantially similar to the form attached as **Exhibit A**. The
18 Notice of Class Action Settlement shall inform Class Members and
19 Aggrieved Employees that they need not do anything in order to
20 receive an Individual Settlement Payment and/or Aggrieved
21 Employees' individual shares of the Aggrieved Employee Payment
22 and to keep the Settlement Administrator apprised of their current
23 mailing address, to which the Individual Settlement Payments and/or
24 Aggrieved Employees' individual shares of the Aggrieved Employee
25 Payment will be mailed following the Funding Date. The Notice of
26 Class Action Settlement shall set forth the release to be given by all
27 members of the Class who do not request to be excluded from the
28 Settlement Class and/or Aggrieved Employee in exchange for an

1 Individual Settlement Payment and/or Aggrieved Employees'
2 individual share of the Aggrieved Employee Payment, the number of
3 Workweeks worked by each Class Member during the Class Period
4 and PAGA Period, if any, and the estimated amount of their Individual
5 Settlement Payment if they do not request to be excluded from the
6 Settlement and each Aggrieved Employee's individual share of the
7 Aggrieved Employee Payment, if any. The Settlement Administrator
8 shall use the Class Data to determine Class Members' Workweeks and
9 PAGA Pay Periods. The Notice will also advise the Aggrieved
10 Employees that they will release the Released PAGA Claims and will
11 receive their share of the Aggrieved Employee Payment regardless of
12 whether they request to be excluded from the Settlement.

13 b) The Notice Packet's mailing envelope shall include the following
14 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
15 ENTITLED TO PARTICIPATE IN A CLASS ACTION
16 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
17 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
18 NOTICE."

19 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
20 Settlement Administrator will perform a search based on the National Change
21 of Address Database to update and correct any known or identifiable address
22 changes. No later than twenty-one (21) calendar days after preliminary
23 approval of the Settlement, the Settlement Administrator shall mail copies of
24 the Notice Packet to all Class Members via regular First-Class U.S. Mail and
25 electronic mail. The Settlement Administrator shall exercise its best judgment
26 to determine the current mailing address for each Class Member. The address
27 identified by the Settlement Administrator as the current mailing address shall
28 be presumed to be the best mailing address for each Class Member.

1 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. If no forwarding address is
4 provided, the Settlement Administrator shall promptly attempt to determine a
5 correct address by lawful use of skip-tracing, or other search using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform a re-mailing, if another mailing address is identified by the
8 Settlement Administrator. In addition, if any Notice Packets, which are
9 addressed to Class Members who are currently employed by Defendants, are
10 returned to the Settlement Administrator as non-delivered and no forwarding
11 address is provided, the Settlement Administrator shall notify Defendants.
12 Defendants will request that the currently employed Class Member provide a
13 corrected address and transmit to the Administrator any corrected address
14 provided by the Class Member. Class Members who received a re-mailed
15 Notice Packet shall have their Response Deadline extended fifteen (15) days
16 from the original Response Deadline.

17 5. Disputes Regarding Individual Settlement Payments. Class Members will
18 have the opportunity, should they disagree with Defendants' records regarding
19 the start and end dates of employment to provide documentation and/or an
20 explanation to show contrary dates. If there is a dispute, the Settlement
21 Administrator will consult with the Parties to determine whether an
22 adjustment is warranted. The Settlement Administrator shall determine the
23 eligibility for, and the amounts of, any Individual Settlement Payments under
24 the terms of this Agreement. The Settlement Administrator's determination
25 of the eligibility for and amount of any Individual Settlement Payment shall
26 be binding upon the Class Member and the Parties.

27 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
28 by the Settlement Administrator concerning the administration of the

1 Settlement will be resolved by the Court under the laws of the State of
2 California. Before any such involvement of the Court, counsel for the Parties
3 will confer in good faith to resolve the disputes without the necessity of
4 involving the Court.

5 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
6 Packet shall state that Class Members who wish to exclude themselves from
7 the Settlement must submit a signed copy of the Request for Exclusion form
8 to the Settlement Administrator by the Response Deadline. A Request for
9 Exclusion form will be mailed together with the Notice Packet to all Class
10 Members. The Request for Exclusion will not be valid if it is not timely
11 submitted, if it is not signed by the Class Member, or if it does not contain the
12 name and address and last four digits of the Social Security number of the
13 Class Member. The date of the postmark on the mailing envelope or fax stamp
14 on the Request for Exclusion shall be the exclusive means used to determine
15 whether the request for exclusion was timely submitted. Any Class Member
16 who submits a timely Request for Exclusion shall be excluded from the
17 Settlement Class will not be entitled to an Individual Settlement Payment and
18 will not be otherwise bound by the terms of the Settlement or have any right
19 to object, appeal or comment thereon. However, any Class Member that
20 submits a timely Request for Exclusion that is also an Aggrieved Employee
21 will still receive his/her pro rata share of the Aggrieved Employee Payment,
22 as specified below, and in consideration, will be bound by the Release by the
23 Aggrieved Employees as set forth herein. Settlement Class Members who fail
24 to submit a valid and timely Request for Exclusion on or before the Response
25 Deadline shall be bound by all terms of the Settlement and any final judgment
26 entered in this Action if the Settlement is approved by the Court. No later
27 than fourteen (14) calendar days after the Response Deadline, the Settlement
28 Administrator shall provide counsel for the Parties with a final list of the Class

1 Members who have timely submitted timely Requests for Exclusion. At no
2 time shall any of the Parties or their counsel seek to solicit or otherwise
3 encourage members of the Class to submit Requests for Exclusion from the
4 Settlement.

5 8. Objections. The Notice of Class Action Settlement contained in the Notice
6 Packet shall state that Class Members who wish to object to the Settlement
7 may submit to the Settlement Administrator a written statement of objection
8 (“Notice of Objection”) by the Response Deadline. The postmark date of
9 mailing shall be deemed the exclusive means for determining that a Notice of
10 Objection was served timely. The Notice of Objection, if in writing, must be
11 signed by the Settlement Class Member and state: (1) the case name and
12 number; (2) the name of the Settlement Class Member; (3) the address of the
13 Settlement Class Member; (4) the last four digits of the Settlement Class
14 Member’s Social Security number; (5) the basis for the objection; and (6) if
15 the Settlement Class Member intends to appear at the Final
16 Approval/Settlement Fairness Hearing. Class Members who fail to make
17 objections in writing in the manner specified above may still make their
18 objections orally at the Final Approval/Settlement Fairness Hearing with the
19 Court’s permission. Settlement Class Members will have a right to appear at
20 the Final Approval/Settlement Fairness Hearing to have their objections heard
21 by the Court regardless of whether they submitted a written objection. At no
22 time shall any of the Parties or their counsel seek to solicit or otherwise
23 encourage Class Members to file or serve written objections to the Settlement
24 or appeal from the Order and Final Judgment. Class Members who submit a
25 written request for exclusion may not object to the Settlement. Class Members
26 may not object to the PAGA Payment.

27 N. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
28 pay the Gross Settlement Amount, plus any employer’s share of payroll taxes as

1 mandated by law, sixty (60) calendar days after the Final Approval Order if no
2 objection is filed. If an objection is filed, the Gross Settlement Amount will be funded
3 on the 65th day following entry of Judgment (provided no appeal is filed), or if an
4 appeal to the Judgment is filed, the Gross Settlement Amount will be funded within
5 five (5) business days after the Judgment is affirmed and the appellate proceeding the
6 settlement has been finally dismissed with no material change to the terms of this
7 Settlement with no right to pursue further remedies or relief.

8 1. Calculation of Individual Settlement Payments. Individual Settlement
9 Payments shall be paid from the Net Settlement Amount and shall be paid
10 pursuant to the formula set forth herein. Using the Class Data, the Settlement
11 Administrator shall add up the total number of Workweeks for all Class
12 Members. The respective Workweeks for each Class Member will be divided
13 by the total Workweeks for all Class Members, resulting in the Payment Ratio
14 for each Class Member. Each Class Member's Payment Ratio will then be
15 multiplied by the Net Settlement Amount to calculate each Class Member's
16 estimated Individual Settlement Payments. Each Individual Settlement
17 Payment will be reduced by any legally mandated employee tax withholdings
18 (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
19 Members who submit valid and timely requests for exclusion will be
20 redistributed to Settlement Class Members who do not submit valid and timely
21 requests for exclusion on a pro rata basis based on their respective Payment
22 Ratios.

23 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
24 Class Data, the Settlement Administrator shall add up the total number of
25 Workweeks for all Aggrieved Employees during the PAGA Period. The
26 respective Workweeks for each Aggrieved Employee will be divided by the
27 total Workweeks for all Aggrieved Employees, resulting in the "PAGA
28 Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's

1 PAGA Payment Ratio will then be multiplied by the Aggrieved Employee's
2 Portion of the PAGA Payment, \$3,000 (25% of \$12,000), to calculate each
3 Aggrieved Employee's estimated share of the PAGA Payment.

4 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
5 Settlement Payments shall be allocated and treated as 20% wages ("Wage
6 Portion") and 80% penalties and pre-judgment interest ("Penalty and Interest
7 Portion"). The Wage Portion of the Individual Settlement Payments shall be
8 reported on IRS Form W-2 and the Penalty and Interest Portion of the
9 Individual Settlement Payments shall be reported on IRS Form 1099 issued
10 by the Settlement Agreement.

11 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
12 Employee Payments shall be allocated and treated as 100% penalties and shall
13 be reported on IRS Form 1099.

14 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
15 individual shares of the PAGA Payment made to Settlement Class Members
16 and/or Aggrieved Employees under this Settlement Agreement, as well as any
17 other payments made pursuant to this Settlement Agreement, will not be
18 utilized to calculate any additional benefits under any benefit plans to which
19 any Class Members may be eligible, including, but not limited to profit-
20 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
21 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
22 Parties' intention that this Settlement Agreement will not affect any rights,
23 contributions, or amounts to which any Class Members may be entitled under
24 any benefit plans.

25 6. All monies received by Settlement Class Members under the Settlement which
26 are attributable to wages shall constitute income to such Settlement Class
27 Members solely in the year in which such monies actually are received by the
28 Settlement Class Members. It is the intent of the Parties that Individual

1 Settlement Payments and individual shares of the PAGA Payment provided for
2 in this Settlement Agreement are the sole payments to be made by Defendants
3 to Settlement Class Members and/or Aggrieved Employees in connection with
4 this Settlement Agreement, with the exception of Plaintiffs, and that the
5 Settlement Class Members and/or Aggrieved Employees are not entitled to any
6 new or additional compensation or benefits as a result of having received the
7 Individual Settlement Payments and/or their shares of the Aggrieved Employee
8 Payment.

9 7. Mailing. Individual Settlement Payments and PAGA Payments shall be
10 mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or
11 Aggrieved Employees' last known mailing address no later than fifteen (15)
12 calendar days after the Funding Date.

13 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
14 Employees shall remain valid and negotiable for one hundred and eighty (180)
15 days from the date of their issuance. If a Settlement Class Member and/or
16 Aggrieved Employee does not cash his or her settlement check within 90 days,
17 the Settlement Administrator will send a letter to such persons, advising that
18 the check will expire after the 180th day, and invite that Settlement Class
19 Member and/or Aggrieved Employee to request reissuance in the event the
20 check was destroyed, lost or misplaced. In the event an Individual Settlement
21 Payment and/or Aggrieved Employee's individual share of the PAGA
22 Payment check has not been cashed within one hundred and eighty (180) days,
23 all funds represented by such uncashed checks, plus any interest accrued
24 thereon, shall be paid to the Community Law Project a Cy Pres, in accordance
25 with California Code of Civil Procedure section 384.

26 9. Service Award. In addition to the Individual Settlement Payment as a
27 Settlement Class Member and her individual share of the Aggrieved
28 Employee Payment, Plaintiff will apply to the Court for an award of not more

1 than \$10,000.00 as the Service Award. Defendants will not oppose a Service
2 Award of not more than \$10,000.00 for Plaintiff. The Settlement
3 Administrator shall pay the Service Award, either in the amount stated herein
4 if approved by the Court or some other amount as approved by the Court, to
5 Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar
6 days after the Funding Date. Any portion of the requested Service Award that
7 is not awarded to the Class Representative shall be part of the Net Settlement
8 Amount and shall be distributed to Settlement Class Members as provided in
9 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
10 — MISC to Plaintiff for her Service Award. Plaintiff shall be solely and
11 legally responsible to pay any and all applicable taxes on her Service Award
12 and shall hold harmless the Released Parties from any claim or liability for
13 taxes, penalties, or interest arising as a result of the Service Awards. Approval
14 of this Settlement shall not be conditioned on Court approval of the requested
15 amount of the Service Award. If the Court reduces or does not approve the
16 requested Service Award, Plaintiff shall not have the right to revoke the
17 Settlement, and it will remain binding.

18 10. Attorneys' Fees and Attorneys' Expenses. Defendants understand Class
19 Counsel will file a motion for Attorneys' Fees not to exceed one-third of the
20 Gross Settlement Amount currently estimated to be \$89,000.00 *and*
21 Attorneys' Expenses supported by declaration not to exceed Twenty
22 Thousand Dollars (\$20,000.00). Any awarded Attorneys' Fees and
23 Attorneys' Expenses shall be paid from the Gross Settlement Amount. Any
24 portion of the requested Attorneys' Fees and/or Attorneys' Expenses that are
25 not awarded to Class Counsel shall be part of the Net Settlement Amount and
26 shall be distributed to Settlement Class Members as provided in this
27 Agreement. The Settlement Administrator shall allocate and pay the
28 Attorneys' Fees to Class Counsel from the Gross Settlement Amount no later

1 than fifteen (15) calendar days after the Funding Date. Class Counsel shall be
2 solely and legally responsible to pay all applicable taxes on the payment made
3 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
4 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
5 paragraph. In the event that the Court reduces or does not approve the
6 requested Attorneys' Fees, Plaintiff and Class Counsel shall not have the right
7 to revoke the Settlement, or to appeal such order, and the Settlement will
8 remain binding.

9 11. PAGA Payment. Twelve Thousand Dollars (\$12,000) shall be allocated from
10 the Gross Settlement Amount for settlement of claims for civil penalties under
11 the Private Attorneys General Act of 2004. The Settlement Administrator shall
12 pay seventy-five percent (75%) of the PAGA Payment (\$9,000) to the
13 California Labor and Workforce Development Agency no later than fifteen
14 (15) calendar days after the Effective Date. Twenty-five percent (25%) of the
15 PAGA Payment (\$3,000) will be distributed to the Aggrieved Employees as
16 described in this Agreement. For purposes of distributing the PAGA Payment
17 to the Aggrieved Employees, each Aggrieved Employees shall receive their
18 pro-rata share of the Aggrieved Employee Payment using the PAGA Payment
19 Ratio as defined above.

20 12. Claims Administration Expenses. The Settlement Administrator shall be paid
21 for the costs of administration of the Settlement from the Gross Settlement
22 Amount. The estimate of the Administration Costs is \$7,000.00. The
23 Settlement Administrator shall be paid the Claims Administration Expenses
24 no later than fifteen (15) calendar days after the Effective Date.

25 O. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
26 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
27 twenty-eight (28) days following the expiration of the Response Deadline, which
28 motion shall request final approval of the Settlement and a determination of the

1 amounts payable for the Service Award, the Attorneys' Fees and Attorneys'
2 Expenses, the PAGA Payment, and the Claims Administration Expenses. Plaintiff
3 will provide Defendants with a draft of the Motion at least three (3) business days
4 prior to the filing of the Motion to give Defendants an opportunity to propose changes
5 or additions to the Motion.

6 1. Declaration by Settlement Administrator. No later than seven (7) days after
7 the Response Deadline, the Settlement Administrator shall submit a
8 declaration in support of Plaintiff's motion for final approval of this
9 Settlement detailing the number of Notice Packets mailed and re-mailed to
10 Class Members, the number of undeliverable Notice Packets, the number of
11 timely requests for exclusion, the number of objections received, the amount
12 of the average Individual Settlement Payment and highest Individual
13 Settlement Payment, the Claims Administration Expenses, and any other
14 information as the Parties mutually agree or the Court orders the Settlement
15 Administrator to provide.

16 2. Final Approval Order and Judgment. Class Counsel shall present an Order
17 Granting Final Approval of Class Action Settlement to the Court for its
18 approval, and Judgment thereon, at the time Class Counsel files the Motion
19 for Final Approval.

20 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
21 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
22 Final Approval, including the Order Granting Final Approval of Class Action
23 Settlement, and Judgment before filing with the Court. The Parties and their counsel
24 will cooperate with each other and use their best efforts to effectuate the Court's
25 approval of the Motions for Preliminary and Final Approval of the Settlement, and
26 entry of Judgment.

27 O. Cooperation. The Parties and their counsel will cooperate with each other and use
28 their best efforts to implement the Settlement. The Parties will cooperate in vacating

1 any and all class certification deadlines and trial dates. The Parties will cooperate in
2 staying any and all discovery deadlines.

3 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
4 except such proceedings necessary to implement and complete the Settlement, pending
5 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

6 Q. Continuing Jurisdiction. The Court shall retain continuing jurisdiction over this Action
7 under California Code of Civil Procedure section 664.6 to ensure the continuing
8 implementation of the provisions of this Settlement and that the time within which to
9 bring this Action to trial under California Code of Civil Procedure section 583.310
10 shall be extended from the date of signing of this Agreement by all Parties until the
11 entry of the Final Approval Order and Judgment or if not entered, the date this
12 Agreement shall not longer be of any force or effect.

13 R. Amendment or Modification. This Agreement may be amended or modified only by
14 a written instrument signed by counsel for all Parties or their successors-in-interest.

15 S. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or
17 inducements have been made to any Party concerning this Agreement or its Exhibit
18 other than the representations, warranties and covenants contained and memorialized
19 in this Agreement and its Exhibit.

20 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
21 represent they are expressly authorized by the Parties whom they represent to negotiate
22 this Agreement and to take all appropriate Action required or permitted to be taken by
23 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
24 documents required to effectuate the terms of this Agreement. The persons signing
25 this Agreement on behalf of Defendants represents and warrants that he/she is
26 authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and
27 warrants that she is authorized to sign this Agreement and that she has not assigned
28 any claim, or part of a claim, covered by this Settlement to a third-party.

- 1 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
2 to the benefit of, the successors or assigns of the Parties, as previously defined.
- 3 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
4 shall be governed by and interpreted according to the laws of the State of California.
- 5 W. Counterparts. This Agreement may be executed in one or more counterparts by
6 facsimile, electronic signature, or e-mail, for purposes of this Agreement shall be
7 accepted as an original. All executed counterparts and each of them shall be deemed
8 to be one and the same instrument provided that counsel for the Parties to this
9 Agreement shall exchange among themselves copies or originals of the signed
10 counterparts. Any executed counterpart will be admissible in evidence to prove the
11 existence and contents of this Agreement.
- 12 X. Court Filings. The Parties shall not object to any Court filings consistent with this
13 Agreement.
- 14 Y. Disputes. Any disputes between the Parties as to the remaining terms of the Settlement
15 Agreement shall be presented to the mediator for resolution.
- 16 Z. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
17 is a fair, adequate and reasonable settlement of this Action and have arrived at this
18 Settlement after extensive arms-length negotiations, taking into account all relevant
19 factors, present and potential.
- 20 AA. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
21 respect to the interpretation, implementation and enforcement of the terms of this
22 Agreement and all orders and judgments entered in connection therewith, and the
23 Parties and their counsel submit to the jurisdiction of the Court for purposes of
24 interpreting, implementing and enforcing the settlement and all orders and judgments
25 entered in connection with this Agreement.
- 26 BB. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
27 the Court shall first attempt to construe the provisions valid to the fullest extent
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1 possible consistent with applicable precedents so as to define all provisions of this
2 Agreement valid and enforceable.

3 CC. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
4 intend to pursue any claims against the Released Parties, including, but not limited to,
5 any and all claims relating to or arising from Plaintiff's employment with Defendants,
6 regardless of whether Class Counsel is currently aware of any facts or legal theories
7 upon which any claims or causes of action could be brought against Released Parties,
8 including those facts or legal theories alleged in the operative complaint in this Action.
9 The Parties further acknowledge, understand and agree that this representation is
10 essential to the Agreement and that this Agreement would not have been entered into
11 were it not for this representation.

12 DD. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
13 certification for purposes of this settlement only.

14 EE. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
15 Released Claims have merit and give rise to liability on the part of Defendants.
16 Defendants claim that the Released Claims have no merit and do not give rise to
17 liability. This Agreement is a compromise of disputed claims. Nothing contained in
18 this Agreement and no documents referred to and no action taken to carry out this
19 Agreement may be construed or used as an admission by or against the Defendants or
20 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
21 than as may be specifically set forth herein, each Party shall be responsible for and
22 shall bear its/his own attorney's fees and costs.

23 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

24 DATED: Dec. 4, 2023

25 Abigail McMurry
Abigail McMurry (Dec 4, 2023 14:14 PST)

26 Abigail McMurry

27 IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

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DATED: _____

NVN Management LLC dba Arbor Lodging
Management and NVN Hotels

Printed Name

Title

DATED: _____

Arbor Lodging Partners

Printed Name

Title

DATED: _____

NVN San Leandro, LLC


Printed Name

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: Dec. 4, 2023


JCL LAW FIRM, A.P.C.

By:  _____

Attorneys for Plaintiff and the Settlement Class
Members

DATED: Dec. 4, 2023

ZAKAY LAW GROUP, APLC

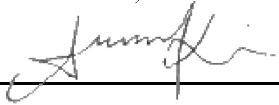
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Attorneys for Plaintiff and the Settlement Class
Members

DATED: 12/12/2023

O'HAGAN MEYER, LLP

By:  _____

Sumy Kim, Esq.
Joseph R. Lordan, Esq.
Attorneys for Defendants

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EXHIBIT A

1 **NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
2 **AND FINAL HEARING DATE**

3 *(McMurry v. NVN Management LLC, et al., Alameda County Superior Court Case No.*
4 *23CV028220)*

5 **YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**
6 **PLEASE READ THIS NOTICE CAREFULLY.**

7 SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS	
8 SETTLEMENT:	
9 Do Nothing and	10 To receive a cash payment from the Settlement, you do not have 11 to do anything. 12 Your estimated Individual Settlement Payment is: 13 \$<< [REDACTED] >>. See the explanation below. 14 After final approval by the Court, the payment will be mailed to 15 you at the same address as this notice. If your address has 16 changed, please notify the Settlement Administrator as 17 explained below. In exchange for the settlement payment, you 18 will release claims against the Defendants as detailed below.
19 Receive a Payment	
20 Exclude Yourself	21 If you wish to exclude yourself from the Settlement, you must 22 send a written request for exclusion to the Settlement 23 Administrator as provided below. If you request exclusion, you 24 will receive no money from the Settlement. 25 Instructions are set forth below.
26 Object	27 You may write to the Court about why you believe the settlement 28 should not be approved. Directions are provided below.

18 **1. Why did I get this Notice?**

19 A proposed class action settlement (the "Settlement") of this lawsuit pending in the Superior Court
20 for the State of California, County of Alameda (the "Court") has been reached between Plaintiff
21 Abigail McMurry (Plaintiff) and Defendants NVN Management LLC dba Arbor Lodging
22 Management and NVN Hotels, Arbor Lodging Partners LLC, and NVN San Leandro, LLC
23 ("Defendants"). The Court has granted preliminary approval of the Settlement. **You may be**
24 **entitled to receive money from this Settlement.**

25 **You have received this Class Notice because you have been identified as a member of the Class.**

26 The Class is defined as:

27 All non-exempt employees who are or previously were employed by Defendant NVN
28 Management LLC dba Arbor Lodging Management and NVN Hotels, and/or
Defendant Arbor Lodging Partners LLC, and/or Defendant NVN San Leandro, LLC
and performed work at the Hilton Garden Inn located at 510 Lewelling Boulevard,
San Leandro in California during the Class Period.

1
2 The “Class Period” is the period from February 21, 2019 to November 20, 2023.

3 This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you
4 read this Notice carefully as your rights may be affected by the Settlement.

5 **2. What is this class action lawsuit about?**

6 On February 21, 2023, Plaintiff filed a Complaint against Defendants in the Superior Court of the
7 State of California, County of Alameda, asserting causes of action for: (1) Unfair Competition (Bus.
8 & Prof. Code §§ 17200 et seq.); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and
9 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 et seq.); (4) Failure to Provide
10 Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to
11 Provide Required Rest Periods (Labor Code §§ 226.7, 516 and the applicable wage order); (6)
12 Failure to Provide Wages When Due (Labor Code §§ 201, 202, 203); (7) Failure to Provide Accurate
13 Itemized Statements (Labor Code § 226 and 226.2 et seq.); and (8) Violation of the Private Attorneys
14 General Act (Labor Code §§ 2698 et seq.).

15 Defendants expressly deny any liability or wrongdoing of any kind associated with the claims alleged
16 in the Action, dispute any wages, damages and penalties claimed by the Class Representative are
17 owed, and further contend that, for any purpose other than settlement, the Action is not appropriate
18 for class or representative action treatment. Defendants contends, among other things, that at all times
19 they complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.
20 Although they deny any liability, Defendants are agreeing to this Settlement solely to avoid the
21 inconveniences and cost of further litigation.

22 On September 21, 2023, the Parties participated in an all-day mediation with Hon. Brian C. Walsh
23 (Ret.), a jurist and mediator of wage and hour class actions. The mediation concluded with a
24 settlement. The Court granted preliminary approval of the Settlement on <<INSERT
25 PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the
26 Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay
27 Law Group, APLC to serve as Class Counsel.

28 **3. What are the terms of the Settlement?**

29 Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Two Hundred Sixty-
30 Seven Thousand Dollars and Zero Cents (\$267,000.00) (the “Gross Settlement Amount”) to fund the
31 settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to
32 Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration
33 Costs, the PAGA Payment, and the Service Award to the Plaintiff.

34 After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing
35 the money with the Settlement Administrator. “Final” means the date the Judgment is no longer
36 subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment
37 is affirmed.

1 Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain
2 payments to be made from the Gross Settlement Amount, which will be subject to final Court
3 approval, and which will be deducted from the Gross Settlement Amount before settlement payments
4 are made to Class Members, as follows:

- 5 • Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to
6 exceed \$7,000.00 for expenses, including expenses of sending this Notice, processing opt-
7 outs, and distributing settlement payments.
- 8 • Attorneys' Fees and Costs. Payment to Class Counsel of Attorneys' Fees of no more than
9 1/3 of the Gross Settlement Amount (currently \$89,000.00) and Attorneys' Costs of not more
10 than \$20,000 for all expenses incurred as documented in Class Counsel's billing records, both
11 subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of
12 Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to
13 date) and have been paying all litigation costs and expenses.
- 14 • Service Award. Service Award of up to Ten Thousand Dollars (\$10,000) to Plaintiff or such
15 lesser amount as may be approved by the Court, to compensate her for services on behalf of
16 the Class in initiating and prosecuting the Action, and for the risks she undertook.
- 17 • PAGA Payment. A payment of \$12,000.00 relating to Plaintiff's claim under the Private
18 Attorneys General Act ("PAGA"), \$9,000.00 of which will be paid to the State of California's
19 Labor and Workforce Development Agency ("LWDA") and the remaining \$3,000.00 will be
20 distributed to PAGA Employees as part of the Net PAGA Amount.
- 21 • Calculation of Payments to Participating Class Members. After all the above payments of the
22 court-approved Attorneys' Fees, Attorneys' Expenses, the Service Payment, the PAGA
23 Payment, and the Settlement Administration Costs are deducted from the Gross Settlement
24 Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to
25 class members who do **not** request exclusion ("Participating Class Members"). Participating
26 Class Members will be paid based on the number of workweeks worked during the Class
27 Period. A "workweek" is defined as any seven (7) consecutive days beginning on Sunday
28 and ending on Saturday, in which a Class Member is employed and received any form of
compensation from Defendants.
- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA
Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude
themselves or opt-out. The PAGA Payment will be divided by the total number of
workweeks worked by all Aggrieved Employees during the PAGA Period, and then taking
that number and multiplying it by the number of workweeks worked by each respective
Aggrieved Employee during the PAGA Period. "Aggrieved Employee" means all non-
exempt employees who are or previously were employed by Defendants and performed work
at the Hilton Garden Inn located at 510 Lewelling Boulevard, San Leandro in California
during the PAGA Period. The PAGA Period means the period from December 14, 2021 to
the date of preliminary approval, or November 20, 2023, whichever is sooner.

1 **If the Settlement is approved by the Court, you will automatically be mailed a check for your**
2 **Individual Settlement Payment to the same address as this Class Notice. You do not have to**
3 **do anything to receive a payment.** If your address has changed, you must contact the Settlement
Administrator to inform them of your correct address to ensure you receive your payment.

4 Tax Matters. Twenty percent (20%) of each Individual Settlement Payment is allocated to wages.
5 Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal
6 Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Individual Settlement
7 Payment is allocated to interest, penalties, and other non-wage payments, and no taxes will be
8 withheld from the PAGA Payment paid to Aggrieved Employees. Each Settlement Class Member
9 will be issued an Internal Revenue Service Form 1099 for Penalty Portion and Interest Portion of the
10 Individual Settlement Payments. In addition, no taxes will be withheld from the PAGA Payment paid
to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service
Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything
contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to
consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

11 No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee
12 Payments made to Settlement Class Members and/or Aggrieved Employees under this Settlement
13 Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be
14 utilized to calculate any additional benefits under any benefit plans to which any Class Members
15 may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock
purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is
the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or
amounts to which any Class Members may be entitled under any benefit plans.

16 Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting
17 final approval of the Settlement and entering judgment.

18 **4. What Do I Release Under the Settlement?**

19 Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount
20 by Defendants, Plaintiff and the Participating Class Members shall release all Released Class Claims
21 that occurred during the Class Period as to the Released Parties. Released Class Claims means all
22 class claims alleged, or reasonably could have been alleged based on the facts alleged, in the
23 operative Complaint in the *McMurry v. NVN Management LLC, et al.* action which occurred during
24 the Class Period, and expressly excluding unrelated claims, including claims for vested benefits,
wrongful termination, unemployment insurance, disability, social security, workers' compensation,
and class claims outside of the Class Period.

25 The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and
26 upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall
27 release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement
28 and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means
all PAGA claims alleged in the operative Complaint in the *McMurry v. NMN Management LLC, et*
al. matter and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and

1 expressly excluding unrelated claims, including claims for vested benefits, wrongful termination,
2 unemployment insurance, disability, social security, workers' compensation and PAGA claims
outside the PAGA Period.

3 This means that, if you do not timely and formally exclude yourself from the settlement, you cannot
4 sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved
5 by this Settlement. It also means that all of the Court's orders in this Action will apply to you and
legally bind you.

6 **5. How much will my payment be?**

7 **Defendants' records reflect that you have <<____>> Workweeks worked during the Class**
8 **Period (February 21, 2019 through November 20, 2023).**

9 **Based on this information, your estimated Settlement Share is <<____>>.**

10 **Defendants' records reflect that you have <<____>> workweeks worked during the PAGA**
11 **Period (December 14, 2021 through November 20, 2023).**

12 **Based on this information, your estimated PAGA Payment Share is <<____>>.**

13 If you wish to challenge the information set forth above, then you must submit a written, signed
14 dispute challenging the information along with supporting documents, to the Settlement
Administrator at the address provided in this Notice no later than _____ [forty-five (45)
15 days after the Notice or fifteen (15) days after the re-mailed Notice].

16 **6. How can I get a payment?**

17 **To get money from the settlement, you do not have to do anything.** A check for your settlement
18 payment will be mailed automatically to the same address as this Notice. If your address is incorrect
or has changed, you must notify the Settlement Administrator. The Settlement Administrator is:
19 Apex Class Action LLC.

20 The Court will hold a hearing on _____ to decide whether to finally approve the
21 Settlement. If the Court approves the Settlement and there are no objections or appeals, payments
will be mailed within a few months after this hearing. If there are objections or appeals, resolving
22 them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the
Settlement Administrator will provide notice of the final judgment to the Class Members by posting
23 a copy of the Judgment on the administrator's website at www.apexclassaction.com.

24
25 **7. What if I don't want to be a part of the Settlement?**

26 If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or
27 "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be**
bound by its terms, except as provided as follows. Irrespective of whether you exclude yourself
28 from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to

1 have released the Released PAGA Claims, and you will receive a share of the PAGA Payment.

2 To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed
3 and dated request for exclusion postmarked no later than _____. The address for the
4 Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel. (800) 355-0700.
5 The request for exclusion must state in substance that the Class Member has read the Class Notice
6 and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled
7 *McMurry v. NVN Management LLC, et al.*, currently pending in Superior Court of Alameda, Case
8 No. 23CV028220. The request for exclusion must contain your name, address, signature and the last
9 four digits of your Social Security Number for verification purposes. The request for exclusion must
10 be signed by you. No other person may opt out for a member of the Class.

11 Written requests for exclusion that are postmarked after _____, or are incomplete or
12 unsigned will be rejected, and those Class Members will remain bound by the Settlement and the
13 release described above.

14 **8. How do I tell the Court that I would like to challenge the Settlement?**

15 Any Class Member who has not opted out and believes that the Settlement should not be
16 finally approved by the Court for any reason, may object to the proposed Settlement. Objections
17 may be in writing and state the Class Member's name, current address, telephone number, and
18 describe why you believe the Settlement is unfair and whether you intend to appear at the final
19 approval hearing. All written objections or other correspondence must also state the name and
20 number of the case, which is *McMurry v. NVN Management LLC, et al., Alameda County Superior
21 Court Case No. 23CV028220*. You may also object without submitting a written objection by
22 appearing at the final approval hearing scheduled as described in Section 9 below.

23 To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you
24 will be bound by the terms of the Settlement in the same way as Class Members who do not object.
25 Any Class Member who does not object in the manner provided in this Class Notice shall have
26 waived any objection to the Settlement, whether by appeal or otherwise.

27 **Written objections must be delivered or mailed to the Settlement Administrator no later
28 than _____.** The address for the Settlement Administrator is 18 Technology Drive,
Suite 164, Irvine, CA 92618; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Counsel for Defendants:

Sumy Kim, Esq.
Joseph R. Lordan, Esq.
O'Hagan Meyer
1 Embarcadero Center, Suite 2100
San Francisco, CA 94111
Tel: (408) 209-5783
E-Mail: skim@ohaganmeyer.com
jlordan@ohaganmeyer.com

1 **Class Counsel:**

2 Shani O. Zakay, Esq.
3 Zakay Law Group, APLC
4 5440 Morehouse Drive, Suite 3600
5 San Diego, CA 92121
6 Tel: (619) 599-8292
7 Fax: (619) 599-8291
8 Email: shani@zakaylaw.com

9 **9. When and where will the Court decide whether to approve the Settlement?**

10 The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the
11 Alameda County Superior Court, Department XX, located at XXXXXX before Judge XXXX. At
12 this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The
13 purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement.
14 If there are objections, the Court will consider them. The Court will listen to people who have made
15 a timely written request to speak at the hearing or who appear at the hearing to object. This hearing
16 may be rescheduled by the Court without further notice to you. **You are not required to attend the**
17 **Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

18 **10. How do I get more information about the Settlement?**

19 You may call the Settlement Administrator at 1-800-355-0700 or write to *McMurry v. NVN*
20 *Management LLC, et al., Alameda County Superior Court Case No. 23CV028220*, Settlement
21 Administrator, 18 Technology Drive, Suite 164, Irvine, CA 92618 c/o _____.

22 This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You
23 may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents
24 by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by
25 visiting the administrator's website at www.apexclassaction.com.

26 The pleadings and other records in this litigation may be examined online on the Alameda County
27 Superior Court's website, known as "eCourt Public Portal," at <https://eportal.alameda.courts.ca.gov>.

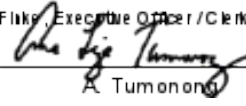
28 After arriving at the website, click the "Search" tab at the top of the page, then select the Document
Downloads link, enter the case number and click "Submit." Images of every document filed in the
case may be viewed at a minimal charge. You may also view images of every document filed in the
case free of charge by using one of the computer terminal kiosks available at each court location that
has a facility for civil filings.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

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- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the Community Law Project, a Cy Pres. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 03/01/2024
PLAINTIFF/PETITIONER: Abigail McMurry	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: NVN Management LLC et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 23CV028220

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Shani Zakay
Zakay Law Group, APLC
shani@zakaylaw.com

Dated: 03/01/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



A. Tumonong, Deputy Clerk