

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASES**

It is hereby stipulated and agreed by and between PLAINTIFFS LANESEA THOMAS, DAVID PRETE, and LISA SHIGA, on behalf of the members of the CLASS to be certified by the California Superior Court, County of Sonoma, on the one hand, and DEFENDANT SONOMA MISSION INN MANAGEMENT COMPANY, LLC, on the other hand, that this putative class action is hereby compromised and settled pursuant to the terms and conditions set forth below, subject to the approval of the Court:

### **DEFINITIONS**

1. "ACTION" shall mean the action entitled *Thomas et al. v. Sonoma Mission Inn Management Company, LLC*, Case No. SCV 257470, pending before the Superior Court of the State of California for the County of Sonoma.
2. "ADMINISTRATION COSTS" shall mean the actual and direct fees and costs reasonably charged by the SETTLEMENT ADMINISTRATOR for its services in administering the SETTLEMENT, including the issuance of the CLASS NOTICE and the calculation and payment of SETTLEMENT AWARDS, currently projected by the PARTIES not to exceed \$15,000. This total amount of ADMINISTRATION COSTS shall include the amount of the ADMINISTRATION COSTS DEPOSIT.
3. ADMINISTRATION COSTS DEPOSIT shall mean the amount of money paid to the SETTLEMENT ADMINISTRATOR within twenty-one (21) days of the PRELIMINARY APPROVAL of the SETTLEMENT to cover the estimated amount of fees and costs in providing notice of the SETTLEMENT to the conditionally-certified CLASS.
4. "AGREEMENT" shall refer to this document and all of the Attachments hereto. Each such Attachment is incorporated into this document by reference as though fully set forth herein.

5. "CLASS" shall mean the aggregate group of CLASS MEMBERS.
6. "CLASS DISTRIBUTION FUND" shall mean the SETTLEMENT FUND after deducting the amount of the (A) the PAGA AWARD (except for that \$2,500 portion of the PAGA AWARD that shall be included in the CLASS DISTRIBUTION FUND); (B) the FEE AND EXPENSE AWARD; (C) the ADMINISTRATION COSTS; (D) the SERVICE FEE; and (E) TAX EXPENSES.
7. "CLASS MEMBERS" shall mean all current and former non-exempt hourly employees who were employed by Defendant as a spa treatment provider (massage, salon, and facial/esthetician) during the CLASS PERIOD.
8. "CLASS NOTICE" shall mean the Court-approved form of notice to CLASS MEMBERS, substantially in the form of Attachment 1 hereto, which will notify CLASS MEMBERS of the following: the conditional certification of the CLASS for settlement purposes, PRELIMINARY APPROVAL of the SETTLEMENT, the procedures for objecting to the SETTLEMENT and requesting exclusion from the CLASS, and the scheduling of the FINAL APPROVAL HEARING.
9. "CLASS PERIOD" shall mean the period between May 12, 2011 through May 18, 2015.
10. "COURT" shall mean the Superior Court of the State of California, County of Sonoma.
11. "DEFENDANT'S COUNSEL" shall refer to the law firm of Coblenz, Patch, Duffy & Bass LLP.
12. "EFFECTIVE DATE" shall mean the later of (A) the date sixty (60) days after the date on which notice of entry of the FINAL JUDGMENT has been served on the PARTIES to

the ACTION following FINAL APPROVAL by the COURT; or (B) the date on which any appeal or request for appellate review of the FINAL JUDGMENT have finally concluded.

13. "EMPLOYEE NUMBER" and "EMPLOYEE NUMBERS" shall mean the employee-specific numbers Defendant has assigned to its employees for purposes of identification.

14. "EMPLOYEE TAXES" shall mean PARTICIPATING CLASS MEMBERS' share of all applicable federal, state and local income and employment taxes.

15. "FEE AND EXPENSE AWARD" shall mean such award of attorneys' fees and costs and expenses as the COURT authorizes to be paid to PLAINTIFFS' COUNSEL for the services they have rendered to PLAINTIFFS and the CLASS in the ACTION from the SETTLEMENT FUND, but in no event shall exceed \$331,666.67 (three hundred thirty-one thousand, six-hundred sixty-six dollars, and sixty-seven cents; one-third of the TOTAL SETTLEMENT AMOUNT) in attorneys' fees, and \$15,000 (fifteen thousand dollars) of reasonable costs and expenses.

16. "FINAL APPROVAL" shall mean that the FINAL JUDGMENT has been entered and the COURT has made its final order awarding attorneys' fees and expenses, in substantially the form of Attachment 2 hereof.

17. "FINAL APPROVAL HEARING" shall mean a hearing held before the COURT to consider FINAL APPROVAL of the SETTLEMENT, the FEE AND EXPENSE AWARD, CLASS certification, whether and in what amount a SERVICE FEE should be awarded to PLAINTIFF, and the merits of any objections to this AGREEMENT and the SETTLEMENT set forth therein or any of its terms.

18. "FINAL JUDGMENT" shall mean an order and judgment issued by the COURT, in substantially the form of Attachment 2 hereto, approving this AGREEMENT as binding upon

the PARTIES, and dismissing the ACTION with prejudice. The FINAL JUDGMENT shall constitute a judgment respecting the PARTIES, within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a).

19. "LEXIS DATABASE" shall refer to a database of names, residential addresses, and portions of Social Security numbers maintained by LexisNexis, including, without limitation, the "Accurint" system maintained by LexisNexis.

20. "MEDIATOR" shall refer to Michael Loeb, Esq.

21. "NATIONAL CHANGE OF ADDRESS SYSTEM" shall mean a database containing a history of known residential addresses, including most recent addresses, for U.S. residents nationally.

22. "NOTICE OF FINAL APPROVAL" or "Notice of Final Approval of Settlement And Entry of Judgment" means a postcard or similar notice entitled "Notice of Final Approval of Settlement And Entry of Judgment" to be approved by the Court, substantially in the form attached hereto as Attachment 4. This Notice of Final Approval shall constitute notice of the Judgment pursuant to California Rule of Court 3.771.

23. "OBJECTION/EXCLUSION DEADLINE" shall mean the date forty-five (45) days after the date on which the SETTLEMENT ADMINISTRATOR first mails the CLASS NOTICE to the CLASS MEMBERS.

24. "PAGA AWARD" shall mean the PARTIES' agreement and stipulation to settle the disputed claims of PLAINTIFFS and the CLASS for penalties under the Labor Code Private Attorney General Act ("PAGA") in the amount of \$10,000 (ten thousand dollars), \$7500 of which shall be remitted to the California Labor Workforce and Development Agency, and \$2500 of which shall be included in the CLASS DISTRIBUTION FUND.

25. "PARTICIPATING CLASS MEMBERS" shall mean all CLASS MEMBERS who have not excluded themselves from the SETTLEMENT by submitting a timely request for exclusion by the OBJECTION/EXCLUSION DEADLINE in accordance with the requirements set forth in the CLASS NOTICE.

26. "PARTIES" shall mean PLAINTIFFS, the CLASS, and DEFENDANT; and the term "PARTY" shall mean either PLAINTIFFS and the CLASS, or DEFENDANT.

27. "PLAINTIFFS" shall mean LaNessa Thomas, David Prete, and Lisa Shiga, the named Plaintiffs in the ACTION.

28. "PLAINTIFFS' COUNSEL" shall mean Richard A. Hoyer and Ryan L. Hicks of the law firm Hoyer & Hicks.

29. "PRELIMINARY APPROVAL" shall mean that the COURT has entered an order substantially in the form of Attachment 3 hereto, preliminarily approving the terms and conditions of this AGREEMENT, including the manner of providing notice to CLASS MEMBERS, appointing PLAINTIFFS' COUNSEL as Class Counsel, and conditionally certifying the CLASS for settlement purposes.

30. "RELEASED CLAIMS" shall mean all known and unknown claims, demands, rights, liabilities, debts, and causes of action that (a) were asserted in the operative Complaint filed in the ACTION, or (b) which might have been asserted in the in the operative Complaint filed in the ACTION (whether in tort, contract, or otherwise) and which arise from or relate to the facts, circumstances, or legal theories alleged in the in the operative Complaint filed in the ACTION, under state, federal, or local laws or regulations. The RELEASED CLAIMS include, without limitation (A) any alleged failure to pay all wages owed to CLASS MEMBERS; (B) failure to pay overtime wages to CLASS MEMBERS and/or to ensure that overtime compensation was properly calculated, (C) any alleged failure to pay "premiums" for missed or

interrupted meal or rest breaks, or to provide such breaks; (D) any alleged failure to pay minimum wage; (E) any alleged failure to pay all wages due upon separation of employment, (F) any alleged failure to pay wages on a timely basis during employment; (G) any alleged failure to issue accurate paystubs; (H) any alleged failure to keep required payroll records; and (I) any alleged violation of California Business and Professions Code section 17200. They include claims for unpaid wages, economic damages, non-economic damages, amounts due under California's Private Attorney General Act ("PAGA"), restitution, statutory penalties, civil penalties, interest, attorneys' fees and costs, and/or any other monetary losses or obligations of any kind to the extent they arise from or relate to the facts, circumstances, and legal theories alleged in the in the operative Complaint filed in the ACTION.

(A) With respect to the "unknown" claims encompassed in the definition of "RELEASED CLAIMS" above, PLAINTIFFS, on behalf of all PARTICIPATING CLASS MEMBERS, expressly waive and relinquish the provisions, rights and benefits of California Civil Code section 1542 and any other similar statute only to the extent their "unknown" claims arise from or relate to the facts, circumstances, or legal theories alleged in the in the operative Complaint filed in the ACTION, or described more specifically above. PLAINTIFFS, as to themselves only, waive the benefits of Section 1542 as to all known and unknown claims they possess, whether or not related to the "wage and hour" claims asserted in the ACTION. Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

(B) "RELEASED CLAIMS" shall not include any claims for breach of this SETTLEMENT.

31. "SERVICE FEE" shall mean such award as the COURT authorizes to be paid to each of the PLAINTIFFS in recognition of their efforts in obtaining the benefits of the SETTLEMENT for the CLASS, but in no event shall exceed ten thousand dollars each (a total of thirty thousand dollars).

32. "SETTLEMENT" shall mean the terms and conditions set forth in this AGREEMENT.

33. "SETTLEMENT ADMINISTRATOR" shall mean Rust Consulting, or some other entity approved by the Court.

34. "SETTLEMENT AWARD" shall mean each PARTICIPATING CLASS MEMBER's percentage share of the amount of the CLASS DISTRIBUTION FUND.

35. "SETTLEMENT FUND" shall mean the TOTAL SETTLEMENT AMOUNT, plus all interest accruing on such amount after it is delivered to the SETTLEMENT ADMINISTRATOR. The SETTLEMENT FUND is the total amount of the FEE AND EXPENSE AWARD, the PAGA AWARD, the SERVICE FEE, the ADMINISTRATION COSTS, TAX EXPENSES, and the CLASS DISTRIBUTION FUND.

36. "TOTAL SETTLEMENT AMOUNT" shall mean the total of \$995,000.00.

37. "SETTLEMENT FUND TAXES" shall mean all taxes (including any interest or penalties) arising with respect to the income earned by the SETTLEMENT FUND, including any taxes or tax detriments that may be imposed upon or the SETTLEMENT FUND with respect to any income earned by the SETTLEMENT FUND for any period during which the SETTLEMENT FUND does not qualify as a "qualified settlement fund" for federal or state income tax purposes.

38. "TAX EXPENSES" shall mean the funds needed to pay SETTLEMENT FUND TAXES and expenses of tax attorneys and/or accountants, mailing and distribution costs, and expenses relating to filing (or failing to file) the informational and other tax returns, including the establishment of adequate reserves for such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. section 1.468B-2(1)(2)). Nothing herein is intended to relieve PARTICIPATING CLASS MEMBERS of their own obligations to pay EMPLOYEE TAXES on any amounts received from the SETTLEMENT FUND.

### **RECITALS**

39. **BACKGROUND OF MATTER.** On July 22, 2015, PLAINTIFFS, on behalf of a putative class of all spa treatment providers employed by DEFENDANT during the four years preceding the date of PLAINTIFFS' arbitration demand to the American Arbitration Association (May 12, 2015), filed their complaint in the ACTION. PLAINTIFFS alleged that DEFENDANT failed to provide legally-compliant meal and rest breaks, failed to pay premium pay for missed, late, or interrupted meal and rest breaks, failed to pay for all time worked by CLASS MEMBERS, failed to pay overtime, failed to pay minimum wage, failed to pay final wages in a timely manner, failed to pay wages during employment in a timely manner, failed to issue legally compliant wage statements, failed to keep required payroll records, and violated California Business and Professions Code section 17200. DEFENDANT has denied all allegations.

40. **MEDIATION.** The PARTIES attended a mediation session before the MEDIATOR on June 29, 2016. At that mediation session, the PARTIES reached the SETTLEMENT memorialized in this AGREEMENT.

41. **PLAINTIFFS' CLAIMS.** Plaintiffs claimed, and continue to claim, that their contentions have merit and give rise to liability, both to them and to the CLASS. Nothing in this AGREEMENT, the documents referenced in this AGREEMENT, nor any action taken to carry



out this AGREEMENT is, or may be construed as or may be used as, an admission by or against the PLAINTIFFS as to the merits or lack thereof of the claims they asserted.

42. **DENIAL OF WRONGDOING.** DEFENDANT denies all of the claims, contentions, and each and every allegation made by the PLAINTIFFS and in their complaint, including, without limitation, and that any such conduct was willful on the part of DEFENDANT. In addition, nothing herein shall be deemed to waive DEFENDANT'S objections and defenses to class certification or any other issue relating to or arising from the allegations set forth in PLAINTIFFS' pleadings filed in the ACTION. Nothing in this AGREEMENT, the documents referenced in this AGREEMENT, nor any action taken to carry out this AGREEMENT is, or may be construed as, or may be used as, an admission, concession or indication by or against DEFENDANT of any fault, wrongdoing or liability whatsoever.

43. **INADMISSIBILITY OF THIS AGREEMENT.** Whether or not the SETTLEMENT is finally approved, and except as may be necessary to enforce any term of this AGREEMENT, or to assert the defenses of release and/or res judicata, neither the SETTLEMENT, nor any of its terms, nor any document, statement, proceeding or conduct related to this AGREEMENT, nor any reports or accounts thereof, shall in any event be:

(A) Construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the PARTIES, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the PARTIES of any liability, fault, wrongdoing, omission, concession or damage; or

(B) Disclosed, referred to or offered or received in evidence against any of the PARTIES, in any further proceeding in the ACTION, or any other civil, criminal or administrative action or proceeding except for purposes of settling the ACTION pursuant to the terms of this AGREEMENT.

44. **INVESTIGATION, DISCOVERY, AND RESEARCH.** The PARTIES conducted significant investigation of the facts and law both before and after the ACTION was filed, and substantial informal discovery prior to the mediation. Informal discovery and investigations included, *inter alia*, the exchange and analysis of voluminous information regarding personnel policies, hours and schedules (including information from multiple databases), and wages paid to the CLASS during the CLASS PERIOD, and CLASS composition and membership. Counsel for the PARTIES have further investigated the applicable law as applied to the facts discovered regarding PLAINTIFFS' claims, the defenses thereto, and the damages claimed by PLAINTIFFS. PLAINTIFFS also sworn declarations from approximately one-third of the CLASS MEMBERS and provided copies of those declarations at the mediation session referenced hereinabove.

45. **PLAINTIFFS' REASONS FOR SETTLEMENT.** PLAINTIFFS have considered the expense and length of continued proceedings necessary to continue the ACTION against Defendant through trial and likely appeals, to demonstrate that certification of their proposed class would be appropriate in a non-settlement context, and that the class is ascertainable in a non-settlement context. PLAINTIFFS have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in proving individual entitlements to damage awards under evolving legal standards. PLAINTIFFS are also aware of the burdens of proof necessary to establish liability for the claims asserted in the ACTION, DEFENDANT'S defenses thereto, and the difficulties in establishing damages. In addition, PLAINTIFFS have considered the settlement negotiations conducted by the PARTIES and the recommendations of the MEDIATOR, who is highly experienced in employment litigation and in wage and hour class action employment litigation specifically. Based on the foregoing and on the advice of

PLAINTIFFS' COUNSEL, PLAINTIFFS have determined that the SETTLEMENT set forth in this AGREEMENT is fair, adequate, and reasonable, and is in the best interests of the CLASS.

46. **DEFENDANT'S REASONS FOR SETTLEMENT.** DEFENDANT has concluded that further litigation would be protracted and expensive and that settlement is desirable. It is DEFENDANT'S position that it would prevail in the ACTION because: (A) it has legally-compliant policies and procedures; (B) putative class members work schedules and payroll records would show that legally-compliant meal and rest breaks were provided, and that all wages due were paid in a timely manner (C) class-wide trial of the claims asserted in the ACTION would be improper and unmanageable because, among other reasons, variations among the CLASS MEMBERS in terms of, among other things, their individual work efficiency and pace, the amount of actual time they worked, and their work schedules; (D) overtime compensation was properly compensated under California and federal law; (E) the wage stubs received by PLAINTIFFS and the CLASS MEMBERS complied with California and federal law requirements; (F) PLAINTIFFS and CLASS MEMBERS were provided the rest and meal breaks required to be provided by law; (G) PLAINTIFFS and CLASS MEMBERS were properly compensated for missed breaks; and (H) other substantive and procedural defects in the claims. DEFENDANT has nevertheless considered the settlement recommendations of the MEDIATOR, who is highly experienced in employment litigation, and desires to avoid the expense and distraction of further litigation, including the cost of resolving individualized claims regarding the amount of time worked on engagements by individual employees, and the risks presented by evolving and uncertain legal standards. DEFENDANT deems it desirable and beneficial that the ACTION be settled in a manner and upon the terms and conditions set forth herein.

NOW, THEREFORE, it is agreed by and between the undersigned that the ACTION be settled and compromised, conditioned upon approval by the COURT, as between PLAINTIFFS,

on behalf of themselves and the putative CLASS they seek to represent, and DEFENDANT, on the following terms and conditions:

**AGREEMENT OF THE PARTIES**

47. **STIPULATION FOR CONDITIONAL CERTIFICATION OF THE CLASS.**

Solely for purposes of consummation and fulfillment of this AGREEMENT, the Parties each agree to the conditional certification of the CLASS. Should, for whatever reason, the SETTLEMENT not become final, the PARTIES' stipulation to conditional class certification shall be deemed null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context.

48. **APPLICATION FOR PRELIMINARY APPROVAL.** Counsel for PLAINTIFFS shall request a hearing before the COURT to seek PRELIMINARY APPROVAL of the SETTLEMENT on the earliest practical date. In conjunction with such hearing, the PARTIES will submit this AGREEMENT, together with the Attachments hereto, and any other documents necessary to implement the SETTLEMENT. Simultaneously with the filing of this AGREEMENT and solely for purposes of this SETTLEMENT, counsel for the PARTIES will request that the COURT enter a Preliminary Approval Order, substantially in the form of Attachment 3 hereto, preliminarily approving the proposed SETTLEMENT, conditionally certifying the CLASS for settlement purposes, and setting a date for the FINAL APPROVAL HEARING. The Preliminary Approval Order shall also provide for notice of the SETTLEMENT and related matters to be disseminated to CLASS MEMBERS as specified herein.

49. **PROCEDURES FOR CLASS NOTICE.** The PARTIES agree to the following procedures for giving notice of this SETTLEMENT to the conditionally-certified CLASS:

(A) Within ten (10) days following entry of the Preliminary Approval Order, DEFENDANT shall provide PLAINTIFFS' COUNSEL with the following information with respect to each CLASS MEMBER: the CLASS MEMBER'S EMPLOYEE NUMBER and the total hours worked during the CLASS PERIOD in a spa treatment provider position by each CLASS MEMBER during the CLASS PERIOD. Separately, and in no way linked to this information, DEFENDANT shall also provide to PLAINTIFFS' COUNSEL a list of each CLASS MEMBER'S name, the last four digits of their Social Security Number/Tax Identification Number, and the city and state of his or her residence. PLAINTIFFS' COUNSEL will not share this information with any PERSON, and will use this information solely for the purpose of verifying the identity of CLASS MEMBERS who contact it for assistance with or questions concerning their claims. In addition, DEFENDANT agree to provide PLAINTIFFS' COUNSEL with information that is reasonably necessary for PLAINTIFFS' COUNSEL to respond to inquiries directed to them by CLASS MEMBERS about this SETTLEMENT and their claims.

(B) DEFENDANT shall also provide the SETTLEMENT ADMINISTRATOR with the following information with respect to each CLASS MEMBER within ten (10) days following entry of the Preliminary Approval Order: the CLASS MEMBER'S name, EMPLOYEE NUMBER, Social Security Number, the total hours during the CLASS PERIOD that the CLASS MEMBER was employed as a spa treatment provider, and the CLASS MEMBER'S most current address and telephone number as contained in DEFENDANT'S personnel records. After receiving such information, the SETTLEMENT ADMINISTRATOR shall update the CLASS MEMBERS' addresses using the LEXIS DATABASE system as well as the NATIONAL CHANGE OF ADDRESS SYSTEM.

- (C) The SETTLEMENT ADMINISTRATOR shall be responsible for:
- (i) Printing and mailing to the CLASS MEMBERS the CLASS NOTICE attached hereto as Attachment 1 as directed by the COURT;
  - (ii) Consulting with counsel for PLAINTIFFS and DEFENDANT concerning any relevant issue, including without limitation, the amounts of SETTLEMENT AWARDS to be paid to PARTICIPATING CLASS MEMBERS;
  - (iii) Keeping track of timely and proper requests for exclusion;
  - (iv) Calculating SETTLEMENT AWARDS;
  - (v) Tax withholding from the "wage-replacement" portions of SETTLEMENT AWARDS;
  - (vi) Distributing and paying SETTLEMENT AWARDS, the PAGA AWARD, the SERVICE FEE, the FEE AND EXPENSE AWARD, ADMINISTRATION COSTS, and TAX EXPENSES as may be ordered by the COURT or as are otherwise necessary;
  - (vii) Providing sworn declaration testimony regarding its dissemination of notice to the CLASS MEMBERS, receipt of exclusions and objections, disbursement of the settlement funds, and administration of the settlement, generally, as necessary; and
  - (viii) Such other tasks as the PARTIES mutually agree or the COURT orders the SETTLEMENT ADMINISTRATOR to perform.

(D) The PARTIES each represent they do not have any financial interest in the SETTLEMENT ADMINISTRATOR or otherwise have a relationship with the SETTLEMENT ADMINISTRATOR that could create a conflict of interest.

50. Within fourteen (14) days after receipt from DEFENDANT of the information described in Paragraph 49(A) and (B) above, the SETTLEMENT ADMINISTRATOR shall send a copy of the CLASS NOTICE in the form approved by the COURT in its Preliminary Approval Order to all persons shown by DEFENDANT'S records to be CLASS MEMBERS, via First Class U.S. mail, using the most current mailing address as determined pursuant to Paragraph 49(B). The CLASS NOTICE shall also include instructions on how to request exclusion from and/or object to the SETTLEMENT. The CLASS NOTICE shall further explain how each PARTICIPATING CLASS MEMBER'S SETTLEMENT AWARD will be calculated.

51. Any CLASS NOTICES returned to the SETTLEMENT ADMINISTRATOR as undelivered and bearing a forwarding address shall be re-mailed by the SETTLEMENT ADMINISTRATOR within three (3) days following receipt of the returned mail. For any CLASS NOTICES returned to the SETTLEMENT ADMINISTRATOR without a forwarding address, the SETTLEMENT ADMINISTRATOR shall conduct one address search using the LexisNexis Accurint system, and shall promptly re-mail the CLASS NOTICES to any newly-found address or addresses. In the event that an intended recipient of a CLASS NOTICE does not receive the CLASS NOTICE, the intended recipient shall nevertheless remain a PARTICIPATING CLASS MEMBER.

52. **PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION FROM THE SETTLEMENT.** CLASS MEMBERS and persons purporting to act on behalf of CLASS MEMBERS who wish to object to the SETTLEMENT and/or to final certification of the

CLASS, or who wish to be excluded from the CLASS, shall submit objections and/or requests for exclusion, using the following procedures:

(A) The CLASS NOTICE shall provide that CLASS MEMBERS and persons purporting to act on behalf of CLASS MEMBERS who wish to object to any aspect of the SETTLEMENT, including final certification of the CLASS, must submit to the SETTLEMENT ADMINISTRATOR, and serve on counsel for the PARTIES, a written statement objecting to the SETTLEMENT describing the nature of the objection and the legal grounds for the objection. Such written statement and all supporting briefs or other materials must be submitted to the SETTLEMENT ADMINISTRATOR and mailed, via First Class U.S. mail, to counsel for the PARTIES listed in Paragraph 115 and postmarked no later than the OBJECTION/EXCLUSION DEADLINE.

(B) No CLASS MEMBER or person purporting to act on behalf of any CLASS MEMBER shall be entitled to be heard at the FINAL APPROVAL HEARING (whether individually or through counsel) or to object to any aspect of the SETTLEMENT, including final certification of the CLASS, and no written objections or briefs submitted by any CLASS MEMBER or person purporting to act on behalf of any CLASS MEMBER shall be received or considered by the COURT at the FINAL APPROVAL HEARING, unless the CLASS MEMBER'S written statement of objections and supporting materials have been timely submitted and served as set forth above. CLASS MEMBERS who fail to submit and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the SETTLEMENT.

(C) The CLASS NOTICE shall also inform CLASS MEMBERS that the Court has conditionally certified the CLASS for settlement purposes, and provide that CLASS



MEMBERS who wish to exclude themselves from the CLASS must no later than the OBJECTION/EXCLUSION DEADLINE submit to the SETTLEMENT ADMINISTRATOR a written statement requesting exclusion from the CLASS. Such written request for exclusion must contain the name, address, and telephone number of the person requesting exclusion, must be returned by certified mail to the SETTLEMENT ADMINISTRATOR at the specified address, and must be postmarked on or before the OBJECTION/EXCLUSION DEADLINE. CLASS MEMBERS who fail to submit a valid and timely request for exclusion in the manner described in this paragraph shall be bound by all terms of the SETTLEMENT and the FINAL JUDGMENT if the SETTLEMENT is approved by the COURT.

(D) No later than ten (10) days after the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide to counsel for the PARTIES the names and EMPLOYEE NUMBERS of those CLASS MEMBERS who have requested exclusion. Counsel for the PARTIES shall also be advised of the estimated amount of the SETTLEMENT AWARD payable to each PARTICIPATING CLASS MEMBER from each settlement tranche.

53. **“REQUEST FOR EXCLUSION” REJECTION OPTION.** If the total number of CLASS MEMBERS who request to be excluded from the SETTLEMENT and/or from the CLASS is more than seven percent (7%) of the number of CLASS MEMBERS to whom a CLASS NOTICE was mailed, Defendant will have the option, at its sole discretion, of rejecting the SETTLEMENT in its entirety; provided, however, that such option must be exercised within seven (7) days after being notified by the SETTLEMENT ADMINISTRATOR of the number and percentage of CLASS MEMBERS who have timely requested exclusion. If this option is exercised by Defendant, the SETTLEMENT will be void and unenforceable in its entirety, any ADMINISTRATION COSTS and TAX EXPENSES incurred up to that date shall be paid from

the SETTLEMENT FUND by the SETTLEMENT ADMINISTRATOR, the order conditionally certifying the CLASS shall be vacated and be deemed void *ab initio*, and any amounts remaining in the SETTLEMENT FUND and residing with the SETTLEMENT ADMINISTRATOR shall be returned to Defendant.

54. **NOTICE TO THE CALIFORNIA LABOR AND WORKFORCE**

**DEVELOPMENT AGENCY.** Pursuant to Labor Code Section 2699(k)(2), PLAINTIFF'S COUNSEL shall submit this SETTLEMENT AGREEMENT to the Labor and Workforce Development Agency at the same time it submits the SETTLEMENT AGREEMENT to the Court.

55. **BEST EFFORTS.** The PARTIES agree to use their best efforts to obtain approval from the court and otherwise to carry out the terms of this SETTLEMENT. Neither of the PARTIES nor counsel will contact CLASS MEMBERS or respond to Class Members inquiries solely for the purpose of attempting to influence them to exclude themselves from the CLASS or object to the SETTLEMENT. If contacted by a CLASS MEMBER, PLAINTIFFS' COUNSEL may provide advice or assistance regarding any aspect of the SETTLEMENT requested by the CLASS MEMBER. Nothing in this SETTLEMENT AGREEMENT shall preclude DEFENDANT from communicating or speaking to its own employees, or providing a truthful response to any inquiries from current or former employees, including that the settlement is of disputed claims and with no admission of liability by DEFENDANT, and that they or it specifically dispute that it has ever underpaid employees, denied them meal or rest breaks, or otherwise violated federal or state employment law in any manner, and nothing in this SETTLEMENT AGREEMENT shall subject DEFENDANT to any claims by virtue of its communications with its own employees. Nothing herein shall prevent PLAINTIFFS' COUNSEL from providing CLASS MEMBERS with access to copies of any documents filed in

the court in support of approval of the settlement, including a copy of the SETTLEMENT AGREEMENT, provided that such publication contains no unilateral characterization of the SETTLEMENT or its terms. PLAINTIFFS' COUNSEL will create a page on its website where copies of the documents relevant to approval of the settlement will be available.

56. **FINAL APPROVAL HEARING.** A FINAL APPROVAL HEARING shall be noticed for a date set by the COURT at the Preliminary Approval Hearing, but no earlier than eighty-seven (87) days following the Preliminary Approval Hearing, such as to allow for the provision of CLASS NOTICE, the expiration of the OBJECTION/EXCLUSION DEADLINE, and the provision by the SETTLEMENT ADMINISTRATOR of the information required to be furnished pursuant to paragraph 49, 50, 52 and 76 hereof. In connection with the FINAL APPROVAL HEARING, the PARTIES shall file such papers with the COURT as either their counsel or the COURT may determine to be necessary. Before the FINAL APPROVAL HEARING, the SETTLEMENT ADMINISTRATOR shall file proof that it complied with its obligations under Paragraphs 49 through 52 of this AGREEMENT. The PARTIES will also at this time seek approval of the NOTICE OF FINAL APPROVAL per C.R.C. 3.771.

57. **FINAL JUDGMENT.** After and assuming FINAL APPROVAL of the SETTLEMENT and of this AGREEMENT, and after and assuming final certification of the CLASS, the PARTIES shall obtain entry of a FINAL JUDGMENT. It is expressly agreed by the PARTIES that the COURT will retain jurisdiction to enforce the terms of this AGREEMENT and the FINAL JUDGMENT, pursuant to California Code of Civil Procedure Section 664.6 and C.R.C. 3.769(h).

58. **DISPUTES.** The PARTIES also agree that, in the event that questions or disputes arise regarding a CLASS MEMBER'S SETTLEMENT AWARD, DEFENDANT shall have no obligation with respect to the provision of additional information or in resolving the

dispute, and the determination of the SETTLEMENT ADMINISTRATOR, based upon the documentation provided by DEFENDANT required herein, as well as information provided by the disputing claimant and/or PLAINTIFFS' COUNSEL, shall be final and binding. The PARTIES acknowledge and agree that all information provided by DEFENDANT in connection with questions or disputes is confidential and shall be maintained as such and in the event that the SETTLEMENT AGREEMENT does not become final, all such information will be returned to DEFENDANT and may not be used by PLAINTIFFS, PLAINTIFFS' COUNSEL or their agents for any purpose.

59. **NULLIFICATION OF AGREEMENT.** The PARTIES expressly agree that either of them may terminate the SETTLEMENT in the event:

(A) The COURT does not enter any order specified herein, including the proposed Preliminary Approval Order substantially in the form of Attachment 3 hereof;

(B) The COURT does not finally approve this AGREEMENT and the SETTLEMENT it embodies;

(C) The COURT does not enter the FINAL JUDGMENT as provided herein, or the FINAL JUDGMENT is reversed, vacated, modified, or overturned on appeal;

(D) The EFFECTIVE DATE does not occur; or

(E) The SETTLEMENT does not become final for any other reason. In such event, this AGREEMENT shall be null and void *ab initio* and any order or judgment entered by the COURT in furtherance of this SETTLEMENT shall be treated as withdrawn or vacated by stipulation of the PARTIES. In such case, the PARTIES shall be returned to their respective statuses as of the date immediately prior to the execution of this AGREEMENT, and the PARTIES shall proceed in all respects as if this AGREEMENT had not been executed.

Notwithstanding the foregoing, none of the following shall constitute grounds for cancellation and termination of the SETTLEMENT: the COURT's determination that the amount of the FEE AND EXPENSE AWARD or SERVICE FEE should be less than that requested by PLAINTIFF'S COUNSEL OR PLAINTIFFS; any appeal of, modification of, or reversal on appeal of any amount of attorneys' fees or costs that have been awarded by the COURT to PLAINTIFF'S COUNSEL, or of the SERVICE FEE to PLAINTIFF; any fact discovered by either PARTY that relates to any claim proposed to be released by this settlement, or any rulings by any California appellate court which appear to alter, modify, or affect any claim asserted by PLAINTIFFS or any defense asserted by DEFENDANTS.

#### **THE SETTLEMENT FUND**

60. **MONETARY CONSIDERATION FROM DEFENDANT.** In full settlement of the claims asserted herein, DEFENDANT will pay the TOTAL SETTLEMENT PAYMENT into the SETTLEMENT FUND, which is a "non-reversionary" amount, and which will be administered by the SETTLEMENT ADMINISTRATOR. Further, DEFENDANT will pay the employer's share of payroll taxes arising from the SETTLEMENT AWARDS. Under no circumstances shall DEFENDANT be required to pay any other amounts as a consequence of this SETTLEMENT.

61. **COMPONENTS OF THE SETTLEMENT FUND.** The SETTLEMENT FUND in this ACTION has six components: (A) the SERVICE FEE; (B) the FEE AND EXPENSE AWARD; (C) the ADMINISTRATION COSTS; (D) TAX EXPENSES; (E) the PAGA AWARD; and (E) the CLASS DISTRIBUTION FUND.

62. **FUNDING OF THE SETTLEMENT FUND.**

(A) Within ten (10) days following PRELIMINARY APPROVAL, DEFENDANT will deliver the ADMINISTRATION COSTS DEPOSIT in the amount of \$0.

Such funds, less actual expenses reasonably incurred by the SETTLEMENT ADMINISTRATOR in providing notice of the SETTLEMENT to the conditionally-certified CLASS and administering the SETTLEMENT pending FINAL APPROVAL, shall be returned to DEFENDANT in the event that the SETTLEMENT does not become effective for any reason, including if the SETTLEMENT is not approved and made final by the COURT.

(B) No later than ten (10) days following the EFFECTIVE DATE, DEFENDANT shall deliver to the SETTLEMENT ADMINISTRATOR a payment of \$995,000 which, together with the ADMINISTRATION COSTS DEPOSIT, shall comprise the TOTAL SETTLEMENT AMOUNT.

(C) Notwithstanding the foregoing, the parties acknowledge and agree that no payment (other than the ADMINISTRATION COSTS DEPOSIT) in any amount shall be due and payable prior to the occurrence of the EFFECTIVE DATE.

(D) The PARTIES agree and contemplate that the SETTLEMENT ADMINISTRATOR shall calculate the amounts due to PARTICIPATING CLASS MEMBERS or others (e.g. PLAINTIFFS' COUNSEL or the SETTLEMENT ADMINISTRATOR for its ADMINISTRATION COSTS), and promptly distribute, per the terms of this Agreement, such payable amounts from the interest-bearing bank account maintained by the SETTLEMENT ADMINISTRATOR for that purpose.

63. **ESCROW OF THE SETTLEMENT FUND.** Should the SETTLEMENT ADMINISTRATOR determine that funds it receives pursuant to paragraph 62, above, cannot or should not be promptly distributed, the SETTLEMENT ADMINISTRATOR will place such funds in escrow in an interest bearing account and/or in instruments backed by the full faith and credit of the United States Government, in interest-bearing accounts fully insured by the United States Government or an agency thereof, or in money market funds investing solely in short term

United States Government obligations, and shall so reinvest the proceeds of these instruments as they mature.

64. **JURISDICTION OVER THE SETTLEMENT FUND.** All funds held in the SETTLEMENT FUND shall be deemed to be *in custodia legis* and shall remain subject to the jurisdiction of the COURT until such time as the funds have been distributed pursuant to this AGREEMENT and the order of the COURT. No withdrawals shall be made from the SETTLEMENT FUND without prior COURT approval.

#### **THE PAGA AWARD**

65. **PAYMENT OF PAGA AWARD.** As consideration for and in settlement of the Labor Code Private Attorney General Act claims asserted in the ACTION, within thirty (30) days after the EFFECTIVE DATE, the SETTLEMENT ADMINISTRATOR will distribute the PAGA AWARD, by sending \$7500 to the Labor Workforce Development Agency ("LWDA"), and including the balance of the PAGA AWARD in the CLASS DISTRIBUTION FUND. Notice to the LWDA of the SETTLEMENT and of the FINAL APPROVAL of the SETTLEMENT, including a copy of the FINAL JUDGMENT, shall be provided by the SETTLEMENT ADMINISTRATOR.

#### **THE SETTLEMENT AWARDS**

66. **SETTLEMENT AWARDS AS CONSIDERATION.** For purposes of resolving the RELEASED CLAIMS, the PARTIES agree that each PARTICIPATING CLASS MEMBER will receive a SETTLEMENT AWARD calculated using a numerical formula based on the number of hours that each PARTICIPATING CLASS MEMBER worked as a spa treatment provider during the CLASS PERIOD while employed by DEFENDANT ("QUALIFYING WORK HOURS") to derive a percentage entitlement for each PARTICIPATING CLASS

MEMBER from the CLASS DISTRIBUTION FUND. The total of all individual SETTLEMENT AWARDS will be equivalent to the CLASS DISTRIBUTION FUND.

67. **DIFFICULTY OF DETERMINING CLAIMS.** The PARTIES agree that a precise calculation of the amount of alleged unpaid compensation allegedly earned by individual CLASS MEMBERS is impracticable, due to fact that the timekeeping and payroll records that would need to be analyzed is voluminous, and the necessary analysis would be very time-consuming and costly. The PARTIES agree to use the QUALIFYING WORK HOURS as a fair and reasonable proxy of determining the PARTICIPATING CLASS MEMBERS' pro rata share of the SETTLEMENT FUND. The PARTIES further agree that the method for allocating the SETTLEMENT AWARDS to the PLAINTIFFS and PARTICIPATING CLASS MEMBERS as described herein is fair and reasonable in light of all of the circumstances and that the payments provided herein are designed to provide a fair settlement to all such persons.

68. **ELIGIBILITY FOR THE SETTLEMENT AWARDS.**

(A) CLASS MEMBERS who submit valid and timely requests for exclusion from the CLASS are not entitled to any SETTLEMENT AWARD and will not be bound by this SETTLEMENT or any order or judgment entered by the COURT approving this SETTLEMENT.

(B) CLASS MEMBERS who do not timely exclude themselves from the CLASS shall be PARTICIPATING CLASS MEMBERS and shall receive a SETTLEMENT AWARD. PARTICIPATING CLASS MEMBERS will not be requested to submit claim forms or proof of eligibility to the SETTLEMENT ADMINISTRATOR to receive a SETTLEMENT AWARD.

69. **CALCULATION OF SETTLEMENT AWARDS.** In order to determine the SETTLEMENT AWARD for each PARTICIPATING CLASS MEMBER, the SETTLEMENT



ADMINISTRATOR shall use the information provided by DEFENDANT about each CLASS MEMBER's QUALIFYING WORK HOURS. The SETTLEMENT ADMINISTRATOR will determine the amount of the SETTLEMENT AWARD that each PARTICIPATING CLASS MEMBER is entitled to receive, pursuant to the methodology set forth below.

(A) The SETTLEMENT ADMINISTRATOR shall add together all QUALIFYING WORK HOURS to determine the "Participating Class's Total Workhours."

(B) The SETTLEMENT ADMINISTRATOR shall then divide each PARTICIPATING CLASS MEMBER's QUALIFYING WORK HOURS by the Participating Class's Total Workhours in order to determine the "Percentage Share" of each PARTICIPATING CLASS MEMBER.

(C) Each PARTICIPATING CLASS MEMBER shall be entitled to receive a SETTLEMENT AWARD equal to his or her Percentage Share of the CLASS DISTRIBUTION FUND.

70. **HYPOTHETICAL.** Thus, if (hypothetically) CLASS MEMBER XX's Percentage Share is 2%, and the CLASS DISTRIBUTION FUND is \$500,000.00, then CLASS MEMBER XX's total gross SETTLEMENT AWARD will be \$10,000.00. If (hypothetically) CLASS MEMBER YY's Percentage Share is .6%, then YY's total gross SETTLEMENT AWARD will be \$3000.00.

71. **WAGES, INTEREST AND PENALTIES.** The PARTIES agree that 33% of each PARTICIPATING CLASS MEMBER'S SETTLEMENT AWARD shall be deemed wage replacement subject to payroll tax. The PARTIES further agree that 67% of each such PARTICIPATING CLASS MEMBER'S SETTLEMENT AWARD represents payments in compromise of claims for non-wage monetary amounts, including non-wage penalties, pre-judgment interest, and post-judgment interest. Only the wage replacement portion and not the

interest/penalty portion of each SETTLEMENT AWARD shall be subject to withholding for federal, state, and local payroll-related taxes. Calculation of withholding amounts shall be performed by the SETTLEMENT ADMINISTRATOR, which shall be exclusively responsible for the same.

72. **DISTRIBUTION OF SETTLEMENT AWARDS AND NOTICE OF FINAL APPROVAL.** Within fourteen (14) days after the deposit of the TOTAL SETTLEMENT AMOUNT, the SETTLEMENT ADMINISTRATOR shall mail checks representing the SETTLEMENT AWARDS (minus any applicable withholdings due) to each PARTICIPATING CLASS MEMBER hereunder. In no event shall any such mailings occur prior to the EFFECTIVE DATE.

Each PARTICIPATING CLASS MEMBER shall receive two checks: one for the "wage replacement" portion of his or her SETTLEMENT AWARD, which shall be net of withholdings, and one for the "non-wage replacement" portion of his SETTLEMENT AWARD.

The distribution and payment of SETTLEMENT AWARDS shall be the exclusive responsibility of the SETTLEMENT ADMINISTRATOR. DEFENDANT shall not be required to make such payment or supervise or conduct the distribution; its sole obligation shall be to pay the TOTAL SETTLEMENT AMOUNT to the SETTLEMENT FUND, in accordance with this AGREEMENT.

73. After ninety (90) days of the mailing of any check to any PARTICIPATING CLASS MEMBER by the SETTLEMENT ADMINISTRATOR, funds attributable to unclaimed, undeliverable, or expired SETTLEMENT AWARD checks shall be transmitted to the California Department of Industrial Relations Unclaimed Wages Fund in the names of Participating Class Members who did not cash his or her check or checks.

74. The back of each check issued to the PARTICIPATING CLASS MEMBERS will state, “My signature hereon constitutes my declaration, under penalty of perjury, that I am the individual to whom this check was made payable and serves as my full and complete release, remise, and discharge of all claims that were or could have been asserted based on the factual allegations of the operative complaint in *Thomas et al. v. Sonoma Mission Inn Management Company, LLC*, Case No. SCV 257470, Superior Court of the State of California for the County of Sonoma, including but not limited to all RELEASED CLAIMS as described more fully in the Notice of Class Action Settlement.”

75. Within fourteen (14) days of and only after the Effective Date, the Settlement Administrator will send to each Settlement Class Member the Notice of Final Approval along with their settlement checks.

76. **CERTIFICATION BY SETTLEMENT ADMINISTRATOR.** No later than ten (10) days following the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide counsel for the PARTIES a written report listing the estimated SETTLEMENT AWARDS payable to each PARTICIPATING CLASS MEMBER, identified by his or her relevant EMPLOYEE number. In addition, upon completion of administration of the SETTLEMENT, the SETTLEMENT ADMINISTRATOR shall provide written certification of such completion to PLAINTIFF’S COUNSEL and DEFENDANT.

#### **OTHER FEES, EXPENSES AND COSTS**

77. **FEE AND EXPENSE AWARD.** PLAINTIFF’S COUNSEL intends to request that the COURT award attorneys' fees in an amount not to exceed one-third of the TOTAL SETTLEMENT AMOUNT, not to exceed \$331,666.67, and for the recovery of reasonable litigation costs and expenses in an amount not to exceed \$15,000. PLAINTIFF’S COUNSEL shall not petition the COURT for, or accept, any additional payments for fees or expenses. The

FEE AND EXPENSE AWARD shall be for all claims for attorneys' fees past, present and future incurred in the ACTION or with respect to the RELEASED CLAIMS, and for any costs and expenses incurred by PLAINTIFFS, the CLASS, and PLAINTIFFS' COUNSEL. DEFENDANT agrees that it will not oppose or undermine the application by PLAINTIFFS' COUNSEL for the payment of fees and expenses set forth in this paragraph, or solicit others to do so, or to dispute a characterization of PLAINTIFFS as the "prevailing party" in that application, and PLAINTIFFS and PLAINTIFFS' COUNSEL agree that DEFENDANT shall have no burden or responsibility to support the request or characterization.

78. The FEE AND EXPENSE AWARD shall be paid to PLAINTIFFS' COUNSEL by the SETTLEMENT ADMINISTRATOR from the SETTLEMENT FUND within fourteen (14) days of the EFFECTIVE DATE. DEFENDANT shall not be required to make such payment other than as described herein; its sole obligation shall be to pay the TOTAL SETTLEMENT AMOUNT to the SETTLEMENT FUND, in accordance with this AGREEMENT.

79. The FEE AND EXPENSE AWARD to PLAINTIFFS' COUNSEL shall constitute full satisfaction of any obligation to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses or costs incurred in the ACTION or with respect to the RELEASED CLAIMS. PLAINTIFFS' COUNSEL, by their approval of this SETTLEMENT, will be deemed to have released DEFENDANT and DEFENDANT'S COUNSEL from any and all claims arising from or related to the ACTION, subject to court approval and actual satisfaction of the obligation.

80. **DEFENDANT'S LEGAL FEES AND COSTS.** DEFENDANT'S own legal fees, costs and expenses incurred in the ACTION shall be borne by DEFENDANT.

81. **SERVICE FEE FOR PLAINTIFFS.** PLAINTIFFS' COUNSEL intends to request that the COURT approve a SERVICE FEE of \$10,000 for each of the named PLAINTIFFS LaNessa Thomas, Lisa Shiga, and David Prete (a total of \$30,000). DEFENDANT will not object to PLAINTIFFS' COUNSEL'S request.

82. The SERVICE FEES shall be paid from the SETTLEMENT FUND by the SETTLEMENT ADMINISTRATOR to PLAINTIFFS within fourteen (14) days of the EFFECTIVE DATE. The SERVICE FEES paid under this AGREEMENT shall be reported on an IRS Form 1099, and shall not be subject to payroll withholding. Payment of the SERVICE FEES shall be the exclusive responsibility of the SETTLEMENT ADMINISTRATOR; DEFENDANT shall not be required to make such payment; its sole obligation shall be to pay the TOTAL SETTLEMENT AMOUNT to the SETTLEMENT FUND, in accordance with this AGREEMENT.

83. The payment of the SERVICE FEES shall not preclude PLAINTIFFS' receipt of a SETTLEMENT AWARD. PLAINTIFFS will receive a SETTLEMENT AWARD, as calculated by the SETTLEMENT ADMINISTRATOR, in addition to the SERVICE FEES determined by the COURT.

84. **ADMINISTRATION COSTS AND TAX EXPENSES.** The ADMINISTRATION COSTS incurred by, or at the direction of, the SETTLEMENT ADMINISTRATOR in connection with the operation and implementation of this AGREEMENT and TAX EXPENSES shall be paid out of the SETTLEMENT FUND unless and until the total ADMINISTRATION COST exceeds \$12,000, in which event payment of such costs must be specifically authorized by the Court. DEFENDANT shall have no responsibility for the payment of any ADMINISTRATION COSTS, or; for monitoring the propriety of any payment requests by, or payments to, the SETTLEMENT ADMINISTRATOR from the SETTLEMENT FUND.

The sole obligation of DEFENDANT shall be to pay the TOTAL SETTLEMENT AMOUNT to the SETTLEMENT FUND, in accordance with this AGREEMENT.

85. The PARTIES agree to cooperate in the SETTLEMENT administration process and to use reasonable efforts to control and minimize the ADMINISTRATION COSTS.

86. **EMPLOYER'S SHARE OF SOCIAL SECURITY, MEDICARE, AND FEDERAL AND STATE UNEMPLOYMENT AMOUNTS.** In addition to the SETTLEMENT FUND described in Paragraphs 60 through 64, DEFENDANT shall be responsible for paying its "employer's share" of all Social Security, Medicare, and Federal and State Unemployment amounts relating to any "wage replacement payments." Such amounts will be computed by the SETTLEMENT ADMINISTRATOR or its designee based on the wage replacement portion of the SETTLEMENT AWARDS actually paid to the PARTICIPATING CLASS MEMBERS from the SETTLEMENT FUND, and shall be paid by DEFENDANT to the SETTLEMENT ADMINISTRATOR. The SETTLEMENT ADMINISTRATOR or its designee shall then be responsible for making all necessary filings in connection with such payments. The SETTLEMENT ADMINISTRATOR's designee, as that term is used in this Agreement, may include DEFENDANT.

87. **EMPLOYEE TAXES.** It shall be the responsibility of the SETTLEMENT ADMINISTRATOR or its designee to timely and properly withhold from SETTLEMENT AWARDS payable to PARTICIPATING CLASS MEMBERS all applicable EMPLOYEE TAXES and to prepare and deliver any necessary tax withholding documentation for signature by all necessary parties and, thereafter, to cause the appropriate deposits of withheld amounts and informational and other tax return filings to occur. Payments to PARTICIPATING CLASS MEMBERS and to PLAINTIFFS' COUNSEL pursuant to this AGREEMENT shall be reported on IRS Forms W-2 and/or 1099, as appropriate, and provided to the respective

PARTICIPATING CLASS MEMBERS, PLAINTIFFS' COUNSEL, and applicable governmental authorities as required by law. EMPLOYEE TAXES shall be withheld and deposited with the applicable governmental authorities in accordance with this AGREEMENT, and shall be a part of, and paid out of, the SETTLEMENT AWARD to each PARTICIPATING CLASS MEMBER.

88. Notwithstanding the SETTLEMENT ADMINISTRATOR'S or its designee's withholding of EMPLOYEE TAXES, PLAINTIFFS and each PARTICIPATING CLASS MEMBER will retain responsibility for paying all applicable state, local, and federal income taxes on all amounts the PLAINTIFFS and PARTICIPATING CLASS MEMBER receive pursuant to this AGREEMENT. Should any taxing authority or agency challenge the allocation of SETTLEMENT AWARDS and/or EMPLOYEE TAXES, each PLAINTIFF and PARTICIPATING CLASS MEMBER shall cooperate with DEFENDANT and provide documentation as requested to demonstrate such payment and the appropriateness of any withholding. PLAINTIFFS and PARTICIPATING CLASS MEMBERS, and not DEFENDANT, shall be exclusively responsible for any taxes, penalties, or interest (with the sole exception of the employer's share of Social Security, Medicare and Federal and State Unemployment-related amounts required to be paid by employers) required by any taxing authority to be paid as a result of the successful challenge by any governmental agency, including the Internal Revenue Service or California Franchise Tax Board, to the allocation of SETTLEMENT AWARDS as between wage replacement payments and non-wage replacement payments or based upon the non-payment of income or other taxes owed by the PARTICIPATING CLASS MEMBER.

89. **TAXES ON SETTLEMENT FUND INTEREST.** For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, the regulations promulgated

thereunder, and this AGREEMENT, the SETTLEMENT FUND shall at all times be treated as a "qualified settlement fund." For the purpose of Treas. Reg. section 1.468B-2(k), the "administrator" of the SETTLEMENT FUND shall be the SETTLEMENT ADMINISTRATOR. In addition, as required, the PARTIES shall jointly and timely make such elections as necessary or advisable to carry out the provisions of this AGREEMENT, including the "relation-back election" (as defined in Treas. Reg. section 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the SETTLEMENT ADMINISTRATOR or its designee to timely and properly prepare and deliver the necessary documentation for signature by any parties whose signatures are required under the Internal Revenue Code, and, thereafter, to cause the appropriate filing to occur.

90. The SETTLEMENT ADMINISTRATOR or its designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the SETTLEMENT FUND (including without limitation the returns described in Treas. Reg. section 1.468B-2(k)). Such returns shall be consistent with this AGREEMENT and in all events shall reflect that all taxes (including any interest or penalties) on the income earned by the SETTLEMENT FUND shall be paid out of the SETTLEMENT FUND as provided in this AGREEMENT.

91. All SETTLEMENT FUND TAXES shall be paid out of the SETTLEMENT FUND, and shall be treated as, and considered to be, a cost of administration of the AGREEMENT.

92. **NO EFFECT ON EMPLOYEE BENEFITS.** The SETTLEMENT AWARDS and PAGA AWARDS to PARTICIPATING CLASS MEMBERS and the SERVICE FEE paid to PLAINTIFFS shall not be deemed to be "pensionable" earnings and shall not have any effect on



the eligibility for, or calculation of, any of the employee benefits (e.g. vacations, holiday pay, retirement plans, etc.) of the PLAINTIFFS or PARTICIPATING CLASS MEMBERS. The PARTIES agree that any SETTLEMENT AWARD, PAGA AWARD, or SERVICE FEE paid under the terms of this AGREEMENT does not represent any modification of PARTICIPATING CLASS MEMBERS' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by DEFENDANT. Further, any SETTLEMENT AWARD, PAGA AWARD, or SERVICE FEES paid hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, employee bonuses, or employee past, current, or future compensation levels. Without limitation of the foregoing, the payment of any SETTLEMENT AWARD, PAGA AWARD, or SERVICE FEE shall not entitle any current or former employee of DEFENDANT to any matching contribution or profit-sharing contribution from DEFENDANT, and no such payments shall be eligible for deferral under any retirement savings plan of DEFENDANT.

93. **WAIVER OF LIABILITY**. No person shall have any claim against DEFENDANT, DEFENDANT'S COUNSEL, PLAINTIFF, the PARTICIPATING CLASS MEMBERS, PLAINTIFFS' COUNSEL or the SETTLEMENT ADMINISTRATOR based on mailings, distributions and payments made, or any other action taken, in accordance with or pursuant to this AGREEMENT or any order of the COURT.

### **RELEASES**

94. **RELEASE BY PLAINTIFFS AND THE CLASS OF CLAIMS ASSERTED IN THE ACTION**. As of the EFFECTIVE DATE, PLAINTIFFS and all PARTICIPATING CLASS MEMBERS hereby fully release and forever discharge DEFENDANT and its past, present, or future owners, parent companies, trustees, representatives, trustors, beneficiaries and

beneficial owners, affiliates, predecessors (including companies it has purchased and absorbed), successors, subsidiaries, current and former officers, shareholders, owners, directors, employees, attorneys, agents, insurers, partners, and their respective management companies and managers, assigns, representatives, heirs, executors, and administrators (the "Fairmont Released Parties"), from the RELEASED CLAIMS and from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensations, claims, suits, causes of action, attorneys' fees, obligations, or liabilities of any nature, type or description, known or unknown, suspected or unsuspected, whether administrative, civil or criminal, whether arising from statute, common law, regulation or other legal source, that relate to, are connected to, or arise out of the RELEASED CLAIMS. Furthermore, PLAINTIFFS and all PARTICIPATING CLASS MEMBERS agree not to sue or otherwise make any claim against the Fairmont Released Parties that in any way relates to or arises out of the RELEASED CLAIMS.

With respect to the "unknown" claims encompassed in the definition of RELEASED CLAIMS" above, PLAINTIFFS, on behalf of all PARTICIPATING CLASS MEMBERS, expressly waive and relinquish the provisions, rights and benefits of California Civil Code section 1542 and any other similar statute only to the extent their "unknown" claims relate to the RELEASED CLAIMS, and described more specifically above. Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

95. The SETTLEMENT AWARDS shall be paid to PARTICIPATING CLASS MEMBERS specifically in exchange for the release of the Fairmont Released Parties by

PLAINTIFFS and PARTICIPATING CLASS MEMBERS and for the covenant by PLAINTIFFS and the PARTICIPATING CLASS MEMBERS not to sue set forth herein.

96. **GENERAL RELEASE BY PLAINTIFFS.** In consideration for, *inter alia*, DEFENDANT'S agreement to pay the SERVICE FEE, PLAINTIFFS hereby release and discharge the Fairmont Released Parties for any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, attorneys' fees, obligations or liabilities of any nature, type or description, whether known or unknown, suspected or unsuspected, whether administrative, civil or criminal, whether arising from statute, common law, regulation or other legal source, that relate to, are connected to, or arise out of any and all of the following: (1) their employment or the termination thereof, (2) their dealings or interactions with the Fairmont Released Parties (3) the claims asserted in the ACTION, (4) any claim that could have been asserted in the ACTION. In this regard, PLAINTIFFS expressly waives and relinquishes to the fullest extent possible the provisions, rights and benefits of California Civil Code section 1542. Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

PLAINTIFFS further covenant not to initiate any court proceeding or administrative action, or to make any claim whatsoever, against the Fairmont Released Parties relating in any manner to any claims they release herein, to the full extent such a covenant is enforceable at law. This covenant shall not be deemed to apply or be construed to apply to any administrative proceeding or government enforcement action the future participation in which is not waivable by an individual as a matter of governing law.

97. **EFFECT OF PRIOR RELEASES.** CLASS MEMBERS shall not be barred from receiving a SETTLEMENT AWARD by virtue of any release or waiver executed by them prior to the EFFECTIVE DATE, and no release or waiver executed by any CLASS MEMBER prior to such date shall be deemed to be limited, amended, modified, superseded, or otherwise affected by a CLASS MEMBER's participation in this settlement. Nothing in this paragraph may be used in any way against DEFENDANT, including without limitation as an admission, concession, evidence or indication, that any release or waiver to which DEFENDANT is a party is or was invalid, unenforceable, or insufficient.

### **PUBLICITY**

98. Neither PARTY will issue any press release respecting the SETTLEMENT, contact the press, nor otherwise affirmatively seek to publicize or advertise the settlement terms to the general public through any media including social media. If requested by a member of the media to provide a comment regarding the resolution of the action, each PARTY will respond simply by stating "the matter has been resolved to the parties' mutual satisfaction." Nothing herein shall prevent PLAINTIFFS' COUNSEL from including a truthful statement on its website to the effect that the matter has settled, provided that such publicly-available description does not contain a unilateral characterization of the settlement or its terms, nor shall anything in this AGREEMENT preclude PLAINTIFFS' COUNSEL from providing copies of the SETTLEMENT AGREEMENT to CLASS MEMBERS on request or on PLAINTIFFS' COUNSEL'S website, or otherwise responding to inquiries from CLASS MEMBERS. Nothing herein shall prevent DEFENDANTS' COUNSEL or DEFENDANT from sharing or disseminating information about this SETTLEMENT.

99. PLAINTIFFS agree not to disparage the Fairmont Sonoma Mission Inn, or the Fairmont brand, in any respect.

## **ADDITIONAL MATTERS**

100. **NO RETALIATION BY DEFENDANT.** DEFENDANT shall not take any adverse employment action or otherwise target, retaliate or discriminate against any CLASS MEMBER by reason of the facts that he or she (A) participated in the ACTION and/or (B) elected or indicated an intention to participate or not to participate in the SETTLEMENT memorialized in this AGREEMENT or any order entered by the COURT approving its terms.

101. **CONFIDENTIAL DOCUMENTS.** PLAINTIFFS and PLAINTIFFS' COUNSEL agree that confidential documents and information provided to them by DEFENDANT shall not be used for any purpose other than enforcement of the SETTLEMENT AGREEMENT, or defense of claims or disputes by CLASS MEMBERS.

102. **THE AGREEMENT AND ATTACHMENTS.** This AGREEMENT includes the terms set forth herein and contained in Attachments 1-4, which are incorporated by reference herein and in the definition of "AGREEMENT" as though fully set forth. Any attachments to this AGREEMENT are an integral part of the AGREEMENT.

103. **HEADINGS AND CAPTIONS.** The headings and captions contained in this AGREEMENT are inserted for convenience and in no way define, limit, extend or describe the scope of this AGREEMENT or the intent of any provision thereof.

104. **INTERIM STAY OF PROCEEDINGS.** Pending the FINAL APPROVAL HEARING to be conducted by the COURT, the PARTIES agree to hold in abeyance all proceedings in the ACTION, except such proceedings as are necessary to implement and complete the SETTLEMENT, or to comply with any order of the COURT. The parties shall seek a formal interim stay order from the COURT as part of their request for preliminary approval.

105. **AMENDMENT OR MODIFICATION.** This AGREEMENT may not be amended or modified in any respect except by a written instrument duly executed by all of the PARTIES to this AGREEMENT or their counsel, and approved by the COURT.

106. **ENTIRE AGREEMENT.** This AGREEMENT and its Attachments constitute the entire agreement of the PARTIES with respect to the matters discussed herein, and no oral or written representations, warranties or inducements have been made to any PARTY concerning this AGREEMENT or its Attachments other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the PARTIES acknowledges that it has not relied on any promise, representation or warranty, express or implied, not contained in this AGREEMENT.

107. **AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT.** Each signatory to this AGREEMENT hereby warrants and represents that he or she has the authority to execute this AGREEMENT, thereby binding the respective party to take all appropriate action required or permitted to be taken by the PARTIES pursuant to this AGREEMENT to effectuate its terms and to execute any other documents required to effectuate the terms of this AGREEMENT.

108. **BINDING EFFECT OF THE AGREEMENT.** This AGREEMENT shall be binding upon, and inure to the benefit of, the PARTIES and their respective heirs, legal representatives, executors, administrators, successors, and assigns.

109. **CHOICE OF LAW.** In determining the rights of the PARTIES hereto, this AGREEMENT shall be governed by, construed, and interpreted in accordance with the internal laws of the State of California, without regard to the conflict of laws principles thereof.

110. **COUNTERPARTS.** This AGREEMENT may be executed in one or more counterparts, each of which shall be an original, provided that counsel for the PARTIES shall exchange among themselves original signed counterparts. This AGREEMENT is effective upon execution of at least one counterpart by each party to this AGREEMENT.

111. **REPRESENTATION BY COUNSEL AND COOPERATION IN DRAFTING.** All of the PARTIES acknowledge that they have been represented by counsel throughout all negotiations and in the execution of this AGREEMENT and that this AGREEMENT has been executed with the consent and advice of counsel. In addition, each of the PARTIES has cooperated in the drafting and preparation of this AGREEMENT. Hence, any rule which construes ambiguities against the drafter shall have no force or effect.

112. **INADMISSIBILITY OF SETTLEMENT AGREEMENT.** If this AGREEMENT does not become effective or is cancelled or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purpose whatsoever in the ACTION or any proceedings between the PARTIES except in connection with enforcing its terms.

113. **PLAINTIFFS' WAIVER OF RIGHT TO BE EXCLUDED AND OBJECT.** By signing this AGREEMENT, PLAINTIFFS agree to be bound by the terms herein, not to request to be excluded from the CLASS, and not to object to any of the terms of this AGREEMENT. Any such request for exclusion or objection by the PLAINTIFFS shall therefore be void and of no force or effect.

114. **TERMINOLOGY AND CONSTRUCTION.** All personal pronouns used in this AGREEMENT, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and the singular shall include the plural and *vice versa*.

115. **NOTICES.** Any notices or other documents that must or may be transmitted to PLAINTIFFS' COUNSEL, DEFENDANTS' COUNSEL, and/or the SETTLEMENT ADMINISTRATOR, pursuant to any section of this AGREEMENT, shall be transmitted to each of the following:

**FOR DOCUMENTS TO THE SETTLEMENT ADMINISTRATOR:**

FSMI Settlement Administrator  
C/O Rust Consulting Inc.  
PO BOX 2396  
Faribault MN 55021-9096

**FOR DOCUMENTS TO THE DEFENDANT'S COUNSEL:**

Susan K. Jamison (skj@cpdb.com)  
Charmaine G. Yu (cgy@cpdb.com)  
Coblentz Patch Duffy & Bass LLP  
One Montgomery Tower  
120 Kearny St #3000  
San Francisco, CA 94104

**FOR DOCUMENTS TO PLAINTIFFS' COUNSEL:**

Richard A. Hoyer (rhoyer@hoyerlaw.com)  
Ryan L. Hicks (rhicks@hoyerlaw.com)  
HOYER & HICKS  
4 Embarcadero Center, Suite 1400  
San Francisco, California 94111  
Telephone: (415) 766-3539  
Facsimile: (415) 276-1738

116. The PARTIES and all counsel acknowledge and agree that for the purposes of any claims, actions, and/or proceedings arising out of this AGREEMENT, notice provided to PLAINTIFFS' COUNSEL shall be deemed to be notice to the PLAINTIFF.

**ATTACHMENTS**

Attachment 1 [Proposed] Notice of Class Action Settlement

Attachment 2 [Proposed] Final Judgment



Attachment 3 [Proposed] Preliminary Approval Order

Attachment 4 [Proposed] Notice of Final Approval

IN WITNESS WHEREOF, each of the parties do hereby execute this Agreement by affixing their respective signatures thereto.

DATED: Sept 9, 2016

*Lanessa Thomas*  
LANESSA THOMAS

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
LISA SHIGA

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
DAVID PRETE

ADDITIONAL SIGNATURES ON FOLLOWING PAGES

Attachment 3 [Proposed] Preliminary Approval Order

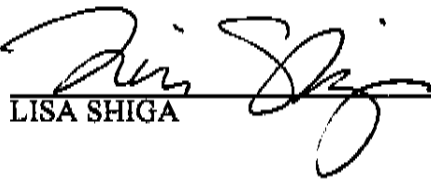
Attachment 4 [Proposed] Notice of Final Approval

**IN WITNESS WHEREOF**, each of the parties do hereby execute this Agreement by affixing their respective signatures thereto.

DATED: \_\_\_\_\_, 2016

LANESSA THOMAS

DATED: Sept 20, 2016

  
LISA SHIGA

DATED: \_\_\_\_\_, 2016

DAVID PRETE

**ADDITIONAL SIGNATURES ON FOLLOWING PAGES**

Attachment 3 [Proposed] Preliminary Approval Order

Attachment 4 [Proposed] Notice of Final Approval

**IN WITNESS WHEREOF**, each of the parties do hereby execute this Agreement by affixing their respective signatures thereto.

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
LANESSA THOMAS

DATED: \_\_\_\_\_, 2016

\_\_\_\_\_  
LISA SHIGA

DATED: Sept 6, 2016

  
\_\_\_\_\_  
DAVID PRETE

**ADDITIONAL SIGNATURES ON FOLLOWING PAGES**

DATED: 9-23, 2016

SONOMA MISSION INN MANAGEMENT, LLC

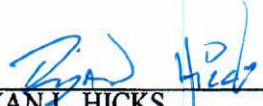
By: 

Its: General Manager

**APPROVED AS TO FORM:**

DATED: 9/26, 2016

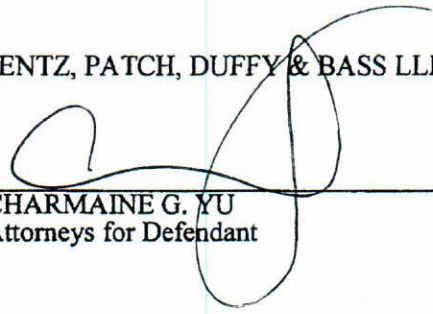
HOYER & HICKS

By: 

RYAN L. HICKS  
Attorneys for Plaintiffs and the Proposed  
Settlement Class

DATED: 9/26, 2016

COBLENTZ, PATCH, DUFFY & BASS LLP

By: 

CHARMAINE G. YU  
Attorneys for Defendant

# ATTACHMENT 1

1 HOYER & HICKS  
Richard A. Hoyer (SBN 151931)  
2 rhoyer@hoyerlaw.com  
Ryan L. Hicks (SBN 260284)  
3 rhicks@hoyerlaw.com  
4 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
tel (415) 766-3539  
5 fax (415) 276-1738

6 Attorneys for Plaintiffs  
LANESSA THOMAS, DAVID PRETE,  
7 and LISA SHIGA

8 SUPERIOR COURT OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SONOMA

11 LANESSA THOMAS, DAVID PRETE,  
And LISA SHIGA, on behalf of all others  
12 similarly situated, aggrieved employees,  
and the State of California

13 Plaintiff,

14 vs.

15 SONOMA MISSION INN MANAGEMENT  
16 COMPANY, LLC, d/b/a THE FAIRMONT  
SONOMA MISSION INN, and DOES 1-25,

17 Defendants,  
18  
19

Case No. SCV 257470

**[PROPOSED] NOTICE TO CLASS  
MEMBERS RE: PENDENCY OF A  
CLASS ACTION AND NOTICE OF  
HEARING ON PROPOSED  
SETTLEMENT**

20  
21  
22  
23  
24 **[PROPOSED] NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION AND NOTICE OF  
HEARING ON PROPOSED SETTLEMENT**

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION AND NOTICE OF HEARING ON PROPOSED SETTLEMENT. THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

***Thomas et al. v. Sonoma Mission Inn Management Company, LLC,*  
Sonoma County Superior Court Case No. SCV 257470**

**PLEASE READ THIS NOTICE CAREFULLY.  
THIS NOTICE COULD AFFECT YOUR LEGAL RIGHTS.**

**YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

**THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.  
YOU HAVE NOT BEEN SUED.**

**YOU ARE NOT REQUIRED TO APPEAR IN COURT IN RESPONSE TO THIS NOTICE.**

**IF YOU WISH TO PARTICIPATE IN THIS SETTLEMENT OF THE CLASS ACTION, YOU DO NOT NEED TO DO ANYTHING, AND YOUR SHARE OF THE SETTLEMENT FUNDS WILL BE MAILED TO YOU FOLLOWING FINAL COURT APPROVAL OF THE SETTLEMENT.**

**PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THIS MATTER.**

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE THE FINDINGS OF THE COURT. IT SHOULD NOT BE UNDERSTOOD TO BE AN EXPRESSION OF THE COURT'S VIEWS ON THE MERITS OF ANY CLAIM OR DEFENSE RAISED BY THE PARTIES.**

**I. INTRODUCTION AND SUMMARY**

This is to notify you of a claim filed on July 22, 2015 by Plaintiffs LaNessa Thomas, Lisa Shiga, and David Prete against their employer Sonoma Mission Inn Management Company, LLC ("FSMI"). These Plaintiffs worked for FSMI as spa treatment providers ("STP") at the Fairmont Sonoma Mission Inn in Sonoma, CA, and they primarily claim that the company among other things, did not always properly provide them with rest and meal periods as required by California law and as a result did not pay them wages for all hours worked, did not timely pay them all wages due at termination, and did not provide them with sufficient statements of their wages. Plaintiffs have filed this action as a proposed class and representative action and seek to pursue similar claims on behalf of other current and former spa treatment providers (massage, salon, and facial/esthetician) employees who performed work for FSMI at the Fairmont Sonoma Mission Inn at any time during the period May 12, 2011 through May 18, 2015 (the "Class Period"). FSMI has not admitted to any liability, and has denied all liability, but has agreed to resolve this matter to avoid the further expense and disruption of litigation pursuant to the procedure set forth in this notice.

The purpose of this Notice is to inform you of the pending settlement agreement and your rights under it. You have received this Notice because you are one of the STP employees employed by FSMI during the Class Period and, unless you opt out, will be deemed part of the class here. This Notice will provide instructions on the options available to you – in particular, it will explain how you can opt out of the settlement altogether, take no action and be deemed a member of the settlement class and sent a settlement payment, and/or take other actions. If you take no action, you will be subject to this agreement and the associated judgment (and the associated release), and you will be sent your allocated settlement payment.

Please review this Notice and consider the options outlined herein carefully.

## II. CLASS COUNSEL

Plaintiffs and the Settlement Class are represented by attorneys at the law firm of Hoyer & Hicks, whose contact information is:

Richard A. Hoyer  
Ryan L. Hicks  
Hoyer & Hicks  
4 Embarcadero Center, Suite 1400  
San Francisco, California 94111  
415.766.3539  
www.hoyerlaw.com

If you choose to remain a Member of the Settlement Class, you will be represented by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

## III. CERTIFICATION AND HEARING THEREON

On or about [PRELIMINARY HEARING DATE], pursuant to the procedures for the approval of class actions and California Rule of Court 3.769, the Court granted preliminary approval for the settlement of this matter as a class action and scheduled a hearing on final approval for [FINAL APPROVAL HEARING DATE AND TIME]. This hearing will take place at Courtroom 18 of the Sonoma County Superior Court, located at 3055 Cleveland Avenue, Santa Rosa, CA 95403. Members of the Class, including you, can express their views on the settlement at or before this hearing, but you are not required to do so, nor are you required to attend this hearing to exercise any of your rights, including either the right to remain a class member and receive payment or the right to opt out of this action. Members of the Class can exercise either these options by following the instructions contained in this Notice; again, no appearance by you at the hearing is required.

In addition to scheduling this hearing, the Court approved this Notice and approved the parties' request to mail this Notice to all Members of the Class. This conditional certification order does not reflect the Court's opinion on the merits of any claim or defense raised by the parties.

## IV. THE PEOPLE RECEIVING THIS NOTICE AND ADDRESS CHANGES

Plaintiffs Thomas, Shiga, and Prete have brought this action as a class and representative action. In class and representative actions, one or more persons bring claims on behalf of themselves and others who are allegedly in similar situations or have similar claims. In order to ensure that all Class Members are given an adequate opportunity to protect their rights, this Notice is being mailed to the last known addresses of all people identified as Class Members, and address verification measures have been taken. If, for any future reference or mailings, the recipient of this Notice, *i.e.*, you, wish to change the name or address listed on the envelope in which this Notice was sent, please provide that information on the Change of Address Form attached to this Notice as Form A.

## V. DESCRIPTION OF THE LAWSUIT

Plaintiffs Thomas, Shiga, and Prete filed a claim on behalf of themselves and others allegedly similarly situated alleging that FSMI did not properly provide rest and meal periods to its hourly STP employees at the Fairmont Sonoma Mission Inn as required by state law during the period relevant to this suit. Plaintiffs have also alleged that as a result of the missed meal and rest periods, FSMI failed to pay wages to its STP employees for all hours worked as a result, failed to pay wages timely, and failed to provide hourly STP employees with accurate statements of wages earned.

FSMI values its reputation as a responsible company and employer. Upon learning of Plaintiffs'



allegations, they voluntarily commenced efforts to review the claims. FSMI has chosen to work with Plaintiffs and their counsel to resolve this matter and address any doubt with regard to these issues. Accordingly, and subject to court approval, the parties have entered a settlement agreement that provides for the certification of a class consisting of current and former hourly STP employees who worked for FSMI during the period from May 12, 2011 through May 18, 2015, the date that FSMI began inserting 15-minute dedicated rest periods into STP schedules.

## **VI. KEY TERMS OF THE PROPOSED SETTLEMENT**

Plaintiffs and the company have voluntarily entered into this settlement agreement. Through this settlement, neither FSMI nor any of its affiliates or employees have admitted any liability or wrongdoing. The total maximum amount of the Settlement is nine-hundred ninety-five thousand dollars, and this amount, less the amounts awarded by the Court for attorneys' fees and costs, the enhancement to Plaintiffs, the Settlement Administrator's costs, and payment amount to the California Labor and Workforce Development Agency, will be available for distribution among the class members who do not opt out of the settlement.

Subject to final approval by the Court, the attorneys for Plaintiffs and the Class (herein "Class Counsel") will be paid a sum sufficient to compensate them for their services in this matter. The company will pay this combined and total sum, which will at most be \$331,666.67 for Plaintiffs' attorneys' fees and up to \$15,000 in taxable litigation costs. Class Members will not be required to compensate Class Counsel.

In addition to the payments to Class Counsel, each of the three named plaintiffs may receive a court-approved payment beyond what each would receive as a claimant in this action. This payment will be in the amount of up to \$10,000 for each plaintiff, and it will be in compensation for each plaintiff's role as a named plaintiff prosecuting this class action lawsuit on the behalf of all Class Members, and also in exchange for a total, general release. Class Members will not be responsible for this payment – it will come from the settlement fund.

A full copy of the settlement agreement and other public documents filed with the Court with regard to this matter can be inspected and copied in the Office of the Court Clerk. The Office of the Clerk is located at the California Superior Court for Sonoma County, located at 600 Administration Drive, Room 107J, Santa Rosa, CA 95403. Please see Section IX of this Notice for further details. During the pendency of the notice period, you can also view copies of the key filings in this case on Class Counsel's website at the [www.hoyerlaw.com/FSMI-settlement-information.php](http://www.hoyerlaw.com/FSMI-settlement-information.php)

Each Class Member who does not opt out of the settlement will receive a payment in an amount determined by the amount of wages he or she received for work performed as a STP employee for FSMI during the class period. Company records demonstrate that during the pertinent period, you earned [MERGE PERCENTAGE NUMBER] % of the total wages paid to STPs during the class period, and if the Court approves the settlement you will receive [MERGE PERCENTAGE NUMBER] % of the total settlement proceeds distributed to participating class members, which is estimated to be at least \$ \_\_\_\_\_ [MERGE INDIVIDUAL AMOUNT] hours in a STP position.

A portion of this payment will be subject to required wage withholdings and deductions, and so the net payable amount will be less than the gross amount of the settlement sum. Specifically, the company will report one-third of this payment to relevant government entities as a wage payment, and the remaining two-thirds as a non-wage payment. The company reserves the right to make any required withholdings or deductions as required by applicable law, and the company will report any payments made pursuant to this agreement to the Internal Revenue Service and other relevant government entities (if any) as required by law.

If you believe that the information regarding your hours worked is incorrect, you must explain your disagreement in writing signed under penalty of perjury, and mail it along with any documentation<sup>3</sup> relating

to your disagreement to the Settlement Administrator at the address provided below. For your explanation and documentation to be considered, they must be postmarked by [INSERT NOTICE RESPONSE DEADLINE]. The parties will review such disputes and attempt to resolve them without court involvement. Please keep in mind that only hours worked during the pertinent period and in the pertinent STP positions count. Hours worked outside the period or in other positions do not count, and so this is not a situation in which any hours worked for FSMI are qualifying. Please also be advised that the submission of such a dispute could delay processing of your settlement payment.

Class Members will be responsible for any taxes on any payments made pursuant to this settlement. Neither the Class Representatives, Class Counsel, nor FSMI makes any representations concerning the tax consequences of this settlement or your participation in it, and you may seek tax advice from a tax professional at your own expense in association with your response to this notice.

Only those individuals who remain Members of the Class will be eligible to participate in this settlement and receive payment under this agreement. All individuals who do not opt out will be subject to the judgment. On the other hand, those Class Members who opt out of the settlement will not be eligible to obtain payment pursuant to this settlement, nor will they be bound by the judgment and associated waiver or release of related claims.

## VII. THE RIGHTS AND OPTIONS OF CLASS MEMBERS

You have received this Notice because company records suggest that you are a member of the conditionally certified Class. Current Members of the Class have three options:

**First**, individuals who are currently Members of the Class, including you, may choose to remain Members of the Settlement Class and receive a share of the settlement. To remain a member of the Settlement Class and be mailed your share of the settlement following and assuming approval of the settlement by the Court, you need not take any action. **IF YOU DO NOTHING, YOU WILL RECEIVE A SETTLEMENT PAYMENT AND BE BOUND BY THE TERMS OF THE SETTLEMENT.**

**Second**, if you do not wish to be part of this settlement, you may elect to “opt out” of the Settlement Class and thus exclude yourself from this action and the associated settlement and judgment. Class Members who opt out of this action would remain free, subject to the statute of limitations and applicable statutory, common law or other restrictions, to bring against FSMI otherwise viable claims of the nature encompassed by this settlement and associated release. Similarly, if you decide to opt out, you will not be allowed to object to this settlement. The deadline to opt out is [NOTICE RESPONSE DEADLINE]. This deadline is final, and forms not postmarked before the pertinent deadline will not be honored. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE A PAYMENT.**

To elect to opt out of the lawsuit and associated settlement, you must send a letter to the Settlement Administrator and also to Class Counsel stating “With respect to the Thomas Matter, I wish to opt out of the Settlement Class and to exclude myself from the associated settlement and judgment.” You will also need to include your name, address, phone number and the month and year you began working for FSMI, and your signature on the letter. Class Counsel’s address is listed above. The Settlement Administrator’s address is:

FSMI SETTLEMENT ADMINISTRATOR  
C/O RUST CONSULTING INC  
PO BOX 2396  
FARIBAULT MN 55021-9096

**Third**, and in addition to either one of the above options, Class Members may (a) participate in this lawsuit at their own expense by obtaining their own attorneys (Class Members who choose this option will be responsible for any attorney fees or costs incurred as a result of this election); and/or (b) submit

written objections to the settlement by mailing them to the Settlement Administrator and Class Counsel at the above-listed addresses no later than [NOTICE RESPONSE DEADLINE]. Class Counsel will present these objections to the Court. Late objections will not be valid.

**Finally**, please be advised that if you fail to take any action (*i.e.*, fail to submit a claim form and fail to opt out), you will remain in the Settlement Class and receive your settlement payment, shall be deemed to have forever released and discharged the Released Claims, and will be subject to the judgment rendered in this action, *i.e.*, the judgment issued in connection with the settlement.

If you remain in the Settlement Class (*i.e.*, do not opt-out), and the Settlement is ultimately approved by the Court, you will be deemed to have forever released FSMI of any known or unknown claims for failure to provide rest and/or meal periods or any associated benefits or remedies.

Specifically, if you remain in the Settlement Class (*i.e.*, do not opt-out), and the Settlement is ultimately approved by the Court, you will be deemed to have forever released and discharged FSMI and all of its past and present affiliates, directors, officers and employees from any and all claims of any nature or kind whatsoever, whether known or unknown, based on any actual or alleged failure to provide sufficient rest and/or meal periods or pay additional sums of money in lieu thereof and all derivative claims, including claims for (A) failure to pay regular, overtime, and/or premium wages per the allegations of the complaint; (B) failure to comply with payroll, wage record-keeping, and/or wage statement itemization requirements; (C) failure to timely pay wages due at termination or otherwise; (D) and to the extent not covered above, any claims based on facts pled in the Litigation. Specifically, this release shall result in the waiver of all claims, including without limitations unknown claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, whether known or unknown, whether or not concealed or hidden, against FSMI and any of its affiliated persons or entities for any type of relief as a result of the Class Member's employment in California for (a)(i) failure to provide sufficient meal and/or rest periods; (ii) associated failure to pay premium or other wages; (iii) failure to comply with payroll or wage record-keeping or wage statement itemization requirements; and (iv) failure to timely pay Wages due at termination or otherwise; (b) penalties or any other remedies for any of the claims covered by subsection (a) above under any statute or regulation or other provision of law, including without limitation claims under California Labor Code sections 201, 201.3, 202, 203, 204, 226, 226.7, 512 & 1194, California Labor Code section 2698 *et seq.*, California Business and Professions Code section 17200 *et seq.*, any applicable California Industrial Welfare Commission Wage Order (including without limitation Wage Order 4), and the federal Fair Labor Standards Act; (c) injunctive relief, restitution, disgorgement, accounting, declaratory relief or other equitable relief for any of the claims covered by subsection (a); (d) any and all claims for interest, costs, or attorney fees for any of the claims covered by subsection (a), including without limitation California Labor Code sections 218.5, 1194 & 2698 *et seq.*; and (e) to the extent not covered above, all claims arising from the factual allegations pled in the Litigation.

With respect to those claims released by the above specified release, and only such claims (as opposed, for example, to claims for wrongful termination or Workers Compensation), all Settlement Class Members, *i.e.*, people who do not opt out of the settlement, shall be deemed to have, and by operation of the judgment shall have, expressly waived, the rights and benefits of California Civil Code section 1542, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

## VIII. HEARING ON SETTLEMENT

The Court will hold a hearing on the advisability and propriety of this settlement on [FINAL APPROVAL HEARING DATE AND TIME]. This hearing will take place at Courtroom 18 of the Sonoma County Superior Court, located at 3055 Cleveland Avenue, Santa Rosa, CA 95403, Judge Rene Chouteau,

presiding. Attendance at this hearing is completely optional; attendance at the hearing is not required at all, and it is not required to participate in the settlement or opt out of the lawsuit.

**IX. EXAMINATION OF PAPERS FILED IN THIS ACTION**

This Notice does not fully describe the action. Members of the public, including but not limited to those whose rights may be affected by this action, may inspect the files (including the full settlement agreement) at the Office of the Court Clerk at the following address:

Clerk of Court  
Sonoma County Superior Court – Hall of Justice  
600 Administration Drive, Room 107J  
Santa Rosa, CA 95403

During the pendency of the notice period, you can also view copies of the key filings in this case on Class Counsel's website at the web address: [www.hoyerlaw.com/FSMI-settlement-information.php](http://www.hoyerlaw.com/FSMI-settlement-information.php).

**PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK OF THE COURT WITH QUESTIONS REGARDING THIS ACTION.**

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**FORM A**  
**FOR**  
**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION AND**  
**NOTICE OF HEARING ON PROPOSED SETTLEMENT THEREOF**

**Change of Address Form**

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Pursuant to Section IV of the Notice, I hereby wish to change the mailing address on record for the remainder of this matter.

For the remainder of this action, including for the mailing of any payment or further notices, I request that the Settlement Administrator use the following address for re:

Name of Class Member (print):

Address:

City, State and Zip Code:

Phone:

Last 4 Digits of Social Security Number/Tax Identification Number:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

For purposes of verification only, I started working for FSMI in: \_\_\_\_\_, \_\_\_\_\_.  
MONTH YEAR

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

**FSMI SETTLEMENT ADMINISTRATOR  
C/O RUST CONSULTING INC  
PO BOX 2396  
FARIBAULT MN 55021-9096**

**NOTE: FORMS MUST BE RECEIVED NO LATER THAN [INSERT NOTICE  
RESPONSE DEADLINE DATE],  
2016 IN ORDER TO BE VALID AND EFFECTIVE.**

# ATTACHMENT 2

1 HOYER & HICKS  
Richard A. Hoyer (SBN 151931)  
2 rhoyer@hoyerlaw.com  
Ryan L. Hicks (SBN 260284)  
3 rhicks@hoyerlaw.com  
4 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
tel (415) 766-3539  
5 fax (415) 276-1738

6 Attorneys for Plaintiffs  
LANESSA THOMAS, DAVID PRETE,  
7 and LISA SHIGA

8 SUPERIOR COURT OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SONOMA

11 LANESSA THOMAS, DAVID PRETE,  
And LISA SHIGA, on behalf of all others  
12 similarly situated, aggrieved employees,  
and the State of California

13 Plaintiff,

14 vs.

15 SONOMA MISSION INN MANAGEMENT  
16 COMPANY, LLC, d/b/a THE FAIRMONT  
SONOMA MISSION INN, and DOES 1-25,

17 Defendants,  
18  
19

Case No. SCV 257470

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
SETTLEMENT, MOTION FOR  
ATTORNEYS' FEES AND JUDGMENT**

20 This matter came on for hearing upon the motion for final approval of the settlement  
21 set forth in the Stipulation of Settlement (the "Stipulation"). Due and adequate notice  
22 having been given to the Class, and the Court having considered the Stipulation, all papers  
23 filed and proceedings had herein and all oral and written comments received regarding the  
24 proposed settlement, and having reviewed the record in this Litigation, and good cause

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, MOTION FOR  
ATTORNEYS' FEES AND COSTS, AND JUDGMENT**



1 appearing,

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

3 1. The Court, for purposes of this Judgment (“Judgment”), adopts all defined  
4 terms as set forth in the Stipulation Re: Settlement of a Class Action (“Stipulation”) filed in  
5 this case.

6 2. The Court has jurisdiction over the subject matter of the Litigation, the Class  
7 Representative, the other Members of the Settlement Class and Defendants.

8 3. The Court finds that the distribution of the Notice to Class Members Re:  
9 Pendency of Class Action, as provided for in the Order Granting Preliminary Approval for  
10 the Settlement and Setting Hearing on Proposed Settlement, constituted the best notice  
11 practicable under the circumstances to all Persons within the definition of the Class and  
12 fully met the requirements of California law and due process under the United States  
13 Constitution. Based on evidence and other material submitted in conjunction with the  
14 Settlement Hearing, the actual notice to the class was adequate.

15 4. The Court finds that the instant Litigation presented a good faith dispute over  
16 rest and meal period claims, the payment of Wages, and other relief, and the Court finds in  
17 favor of settlement approval.

18 5. The Court approves the settlement of the above-captioned action, as set forth  
19 in the Stipulation, each of the releases and other terms, as fair, just, reasonable and  
20 adequate as to the Settling Parties. The Settling Parties are directed to perform in  
21 accordance with the terms set forth in the Stipulation.

22 6. Except as to any individual claim of those Persons (identified in Attachment A  
23 hereto) who have validly and timely requested exclusion from the Settlement Class, all of  
24 the Released Claims are discharged and extinguished with prejudice as to the Class

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT, MOTION FOR  
ATTORNEYS’ FEES AND COSTS, AND JUDGMENT**

1 Representative and all of the other Members of the Settlement Class. The Settling Parties  
2 are to bear their own costs, except as otherwise provided in the Stipulation.

3 7. Solely for purposes of effectuating this settlement, this Court has certified a  
4 class of all Members of the Settlement Class, as that term is defined in and by the terms of  
5 the Stipulation, and the Court deems this definition sufficient for purposes of California Rule  
6 of Court 3.765(a).

7 8. With respect to the Settlement Class and for purposes of approving this  
8 settlement only, this Court finds and concludes that: (a) the Members of the Settlement  
9 Class are ascertainable and so numerous that joinder of all members is impracticable; (b)  
10 there are questions of law or fact common to the Settlement Class, and there is a well-  
11 defined community of interest among Members of the Settlement Class with respect to the  
12 subject matter of the Litigation; (c) the claims of Class Representatives are typical of the  
13 claims of the Members of the Settlement Class; (d) the Class Representatives have fairly  
14 and adequately protected the interests of the Members of the Settlement Class; (e) a class  
15 action is superior to other available methods for an efficient adjudication of this controversy;  
16 and (f) the counsel of record for the Class Representatives, *i.e.*, Class Counsel, are  
17 qualified to serve as counsel for the plaintiffs in their individual and representative  
18 capacities and for the Settlement Class.

19 9. By this Judgment, the Class Representatives shall release, relinquish and  
20 discharge, and each of the Settlement Class Members shall be deemed to have, and by  
21 operation of the Judgment shall have, fully, finally, and forever released, relinquished and  
22 discharged all Released Claims (including Unknown Claims). This Judgment resolves and  
23 extinguishes the claims for civil penalties California Labor Code Section 2698 et. seq. that  
24 were asserted through this Litigation or otherwise meeting the definition of Released

1 Claims.

2  
3 10. Neither the Stipulation nor the settlement contained therein, nor any act  
4 performed or document executed pursuant to or in furtherance of the Stipulation or the  
5 settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence  
6 of, the validity of any Released Claim; or (ii) is or may be deemed to be or may be used as  
7 an admission of, or evidence of, any fault or omission by Yelp or any of the Defendant  
8 Releasees in any civil, criminal or administrative proceeding in any court, administrative  
9 agency or other tribunal. Defendants or any of the Defendants Releasees may file the  
10 Stipulation and/or the Judgment from this Litigation in any other action that may be brought  
11 against it or them in order to support a defense or counterclaim based on principles of *res*  
12 *judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or  
13 any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14 11. The only Settlement Class Members entitled to payment pursuant to this  
15 Judgment are Participating Settlement Class Members.

16 12. Defendants have agreed to pay Class Counsel for their reasonable attorneys'  
17 fees in this matter and all additional expenses. Defendants have also agreed to pay each  
18 of the Class Representatives to reimburse them for their unique services as class  
19 representatives. The Court finds that these agreements, as set forth in the Stipulation, are  
20 fair and reasonable. Defendants are directed to make such payments in accordance with  
21 the terms of the Stipulation and any order issued prior to or in conjunction with this  
22 Judgment. Specifically, Defendants are directed to pay Class Counsel \$331,666.67 in  
23  
24

1 attorneys' fees<sup>1</sup> and \$\_\_\_\_\_ in reasonable costs incurred, the class representative  
2 enhancements to each of the Class Representatives in the amount of \$10,000 each, and  
3 payment to the California Labor Workforce and Development Agency in the amount of  
4 \$7,500, which the Court finds sufficient and appropriate under the circumstances. \$10,000  
5 of the settlement proceeds have been allocated to resolution of the PAGA claims, which  
6 75% (\$7,500) to be disbursed to the Labor Workforce and Development Agency, and the  
7 remaining 25% (\$2,500) to be distributed to the Participating Class Members via the  
8 Maximum Amount for Payments to Participating Class Members.

9 13. The Court reserves exclusive and continuing jurisdiction over the Litigation,  
10 the Class Representative, the Settlement Class and Defendants for the purposes of  
11 supervising the implementation, enforcement, construction, administration and  
12 interpretation of the Stipulation and this Judgment pursuant to C.R.C. 3.769(h).

13 IT IS SO ORDERED.

14  
15 DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

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23 <sup>1</sup> The Court finds the hourly rates of class counsel (\$650 per hour for Richard A. Hoyer, \$500 per hour for  
24 Ryan L. Hicks, and \$150 per hour for the work of their law clerks and support staff, respectively) to be reasonable and within the market range charged by attorneys of comparable experience, expertise, and reputation.

# ATTACHMENT 3

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5 fax (415) 276-1738

6 Attorneys for Plaintiffs  
LANESSA THOMAS, DAVID PRETE,  
7 and LISA SHIGA

8 SUPERIOR COURT OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SONOMA

11 LANESSA THOMAS, DAVID PRETE,  
And LISA SHIGA, on behalf of all others  
12 similarly situated, aggrieved employees,  
and the State of California

13 Plaintiff,

14 vs.

15 SONOMA MISSION INN MANAGEMENT  
16 COMPANY, LLC, d/b/a THE FAIRMONT  
SONOMA MISSION INN, and DOES 1-25,

17 Defendants,  
18  
19

Case No. SCV 257470

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT; APPROVING  
CLASS NOTICE; APPOINTING CLASS  
COUNSEL; APPOINTING  
SETTLEMENT ADMINISTRATOR;  
AND, SETTING FINAL APPROVAL  
HEARING**

20 Plaintiffs' motion for an order preliminarily approving a class action settlement and  
21 setting a final approval hearing came on for hearing on or about **[fill in date]**. Defendant  
22 filed a notice of non-opposition to this motion. The Court has considered the Stipulation  
23 Re: Settlement of Class Action (and its attachments), the submissions of counsel, and all  
24 other papers filed in this action. The matter having been submitted and good cause

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

1 appearing therefor, the Court finds as follows:

2 1. All defined terms contained herein shall have the same meanings as set forth  
3 in the Stipulation Re: Settlement of Class Action executed by the Settling Parties and filed  
4 with this Court (the "Stipulation");

5 2. The Class Representatives and Defendant, through their counsel of record in  
6 the Litigation, have reached an agreement to settle all claims in the Litigation;

7 3. The Court conditionally finds that, for the purposes of approving this  
8 settlement only, the proposed Class meets the requirements for certification under section  
9 382 of the California Code of Civil Procedure: (a) the proposed Class is ascertainable and  
10 so numerous that joinder of all members of the class is impracticable; (b) for purposes of  
11 effectuating this settlement, there are questions of law or fact common to the proposed  
12 Class, and there is a well-defined community of interest among members of the proposed  
13 Class with respect to the subject matter of the Litigation; (c) the claims of Class  
14 Representatives are typical of the claims of the members of the proposed Class; (d) the  
15 Class Representatives have and will fairly and adequately protect the interests of the  
16 Members of the Class; (e) for purposes of effectuating this settlement, a class action is  
17 superior to other available methods for an efficient adjudication of this controversy; and (f)  
18 the counsel of record for the Class Representatives is qualified to serve as counsel for the  
19 Class Representative in their own capacities as well as their representative capacities and  
20 for the Class;

21 4. The moving parties also have presented to the Court for review a Stipulation  
22 Re: Settlement of Class Action. The Stipulation is within the range of reasonableness and  
23 meets the requirements for preliminary approval; and

24 5. The moving parties have also presented to the Court for review a plan to

1 provide notice to the proposed Class of the terms of the settlement and the options facing  
2 the Class including, *inter alia*: to opt out of the class action, to be represented by counsel  
3 of their choosing, to object to the settlement, and/or to remain in the Settlement Class and  
4 become a Participating Settlement Class Member. The notice will be mailed to all Class  
5 Members at their Last Known Addresses with provisions for address verification. The  
6 notice plan proposed by the Settling Parties is the best practical under the circumstances.

7 Good cause appearing therefor,

8 IT IS HEREBY ORDERED that:

9 1. Pursuant to California Rule of Court 3.769(d), the Stipulation of Settlement is  
10 preliminarily approved and the Class is provisionally certified, and Hoyer & Hicks are  
11 hereby appointed as Class Counsel, and Plaintiffs are hereby designated the Class  
12 Representative for purposes of Settlement and Rust Consulting Inc. is hereby designated  
13 the Settlement Administrator;

14 2. Notice of the proposed settlement, and the rights of Class Members, including  
15 the right to opt out of the settlement, shall be given by mailing of the Notice to Class  
16 Members Re: Pendency of a Class Action by first class, postage prepaid, to all Class  
17 Members pursuant to the applicable provisions in the Stipulation. Defendants shall provide  
18 the Settlement Administrator with the information necessary to conduct this mailing as set  
19 forth in the Stipulation;

20 3. A hearing shall be held before this Court on **[fill in date]** at **[fill in time]** to  
21 consider whether the settlement should be given final approval by the Court:

22 (a) Written objections by Class Members to the proposed settlement will  
23 be considered if received by the Settlement Administrator and Plaintiffs' Counsel on  
24 or before the Objection/Exclusion Deadline;

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



1 (b) At the Final Approval Hearing, Class Members may be heard orally in  
2 support of or in opposition to the settlement if they have timely submitted a written  
3 objection per the process described in the Class Notice;

4 (c) Plaintiffs' Counsel and counsel for Defendants should be prepared at  
5 the hearing to respond to objections filed by Class Members, and to provide other  
6 information as appropriate, bearing on whether or not the settlement should be  
7 approved; and

8 (d) At the Final Approval Hearing, the Court shall consider any motions or  
9 applications for attorney fees, costs, and litigation expenses consistent with the  
10 Stipulation.

11 4. In the event that the Effective Date occurs, all Participating Class Members  
12 will be deemed to have forever released and discharged the Released Claims. In the event  
13 that the Effective Date does not occur for any reason whatsoever, the Stipulation shall be  
14 deemed null and void and shall have no effect whatsoever.

15 5. All other proceedings in this action are hereby stayed pending the outcome of  
16 the parties' request for final approval of the Settlement.

17 IT IS SO ORDERED.

18  
19 DATED:

\_\_\_\_\_  
Judge of the Superior Court

# ATTACHMENT 4

1 HOYER & HICKS  
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6 Attorneys for Plaintiffs  
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7 and LISA SHIGA

8 SUPERIOR COURT OF CALIFORNIA  
9  
10 IN AND FOR THE COUNTY OF SONOMA

11 LANESSA THOMAS, DAVID PRETE,  
And LISA SHIGA, on behalf of all others  
12 similarly situated, aggrieved employees,  
and the State of California

13 Plaintiff,

14 vs.

15 SONOMA MISSION INN MANAGEMENT  
16 COMPANY, LLC, d/b/a THE FAIRMONT  
SONOMA MISSION INN, and DOES 1-25,

17 Defendants,  
18  
19

Case No. SCV 257470

**[PROPOSED] POSTCARD NOTICE OF  
FINAL APPROVAL AND JUDGMENT**

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22  
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**[PROPOSED] POSTCARD NOTICE OF FINAL APPROVAL AND JUDGMENT**

***Thomas, et al. v. Sonoma Mission Inn Management Company, LLC,  
Case No. SCV-257470 California Superior Court, County of Sonoma***

This notice is being mailed to all Settlement Class Members, including you, pursuant to California Rule of Court 3.771(b) to advise you that the Court has approved the settlement of this matter and entered judgment accordingly. Because you, the addressee of this notice, are a Member of the Settlement Class, and because you did not opt out of the Settlement Class, you are receiving this notice and no further action from you is required under the Judgment.