

# CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Theresa Bendorf (“Bendorf”), Kristy Prather (“Prather”), and Javier Marin (“Marin”) (together, “Plaintiffs”) and defendants SeaWorld Parks & Entertainment, Inc. and Sea World LLC (together, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

## **1. DEFINITIONS.**

1.1. “Action” means the lawsuit alleging violations against Defendants captioned *Theresa Bendorf v. Sea World, LLC, et al.*, Case No. 37-2021-00034922-CU-OE-CTL, and pending in the Superior Court of the State of California, County of San Diego.

1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employees” means all current and former non-exempt employees of Defendants in California during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

1.5. “Class” or “Class Members” collectively refers to the Wage and Hour Class and Failure to Recall Class as follows:

“Wage and Hour Class” or “Wage and Hour Class Members” mean all current and former non-exempt employees of Defendants in California during the Wage and Hour Class Covered Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification). The Wage and Hour Class shall not include any person who submits a valid and timely Request for Exclusion.

“Failure to Recall Class” or “Failure to Recall Class Members” mean all current and former employees of Defendants in California during the Failure to Recall Class Covered Period who were temporarily or permanently furloughed in connection with the COVID-19 pandemic and who Defendants subsequently failed to recall or reinstate to their prior employment status (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification), except those individuals who previously entered into release agreements with Defendants. The Failure to Recall Class shall not include any person who submits a valid and timely Request for Exclusion.

1.6. “Class Counsel” means Jonathan M. Genish and Miriam L. Schimmel of Blackstone Law, APC; Larry W. Lee of Diversity Law Group; James R. Hawkins of James Hawkins APLC; Christina M. Lucio and Malte L. L. Farnaes of Farnaes & Lucio, APC; William L. Marder of Polaris Law Group; and Edward W. Choi of the Law Offices of Choi & Associates.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s full name, last-known mailing address, Social Security number, number of Pay Periods in the Class Period, and number of PAGA Pay Periods in the PAGA Period, and whether the Class Member is a member of the Failure to Recall Class and/or Wage and Hour Class.

1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members, in English with a Spanish translation, in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.

1.11. “Class Period” collectively refers to the Wage and Hour Class Covered Period and Failure to Recall Class Covered Period as follows:

“Wage and Hour Class Covered Period” means the period from May 25, 2021 through December 15, 2022.

“Failure to Recall Class Covered Period” means the period from November 18, 2019 through December 15, 2022.

1.12. “Class Representatives” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as Class Representatives.

1.13. “Class Representative Service Payments” means the payments to the Class Representatives for pursuing the Action and providing services in support of the Class.

1.14. “Court” means the Superior Court of California, County of San Diego.

1.15. “Defendants” means named Defendants SeaWorld Parks & Entertainment, Inc. and Sea World LLC.

1.16. “Defense Counsel” means Aaron H. Cole of Ogletree Deakins Nash Smoak & Stewart, P.C.

1.17. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on the Final Approval; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.20. “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.21. “Gross Settlement Amount” means \$3,500,000 (three million five hundred thousand dollars and no cents), which is the total amount Defendants agree to pay under the Settlement, except as provided in Paragraphs 4.1 and 4.3 below. The Gross Settlement Amount will be used to pay Individual Wage and Hour Class Payments, Individual Failure to Recall Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Administration Expenses Payment. The Gross Settlement Amount includes the Wage and Hour Class Settlement Amount and the Failure to Recall Class Settlement Amount as follows:

“Wage and Hour Class Settlement Amount” means \$1,000,000 (one million dollars and no cents) of the Gross Settlement Amount that will be allocated to the Wage and Hour Class in exchange for the Wage and Hour Class Release, as set forth in Paragraphs 5.2-5.3.

“Failure to Recall Class Settlement Amount” means \$2,500,000 (two million five hundred thousand dollars and no cents) of the Gross Settlement Amount that will be allocated to the Failure to Recall Class in exchange for the Failure to Recall Class Release, as set forth in Paragraphs 5.4-5.5.

1.22. “Individual Class Payments” collectively refers to the Individual Wage and Hour Class Payments and Individual Failure to Recall Class Payments as follows:

“Individual Wage and Hour Class Payment” means a Participating Wage and Hour Class Member’s pro rata share of the Wage and Hour Net Settlement Amount calculated according to the number of Pay Periods worked during the Wage and Hour Class Covered Period.

“Individual Failure to Recall Class Payment” means a Participating Failure to Recall Class Member’s pro rata share of the Failure to Recall Net Settlement Amount.

1.23. “Individual PAGA Payment” means an Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.24. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.26. “LWDA PAGA Payment” means 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.27. “Net Settlement Amount” means the Gross Settlement Amount less the Court approved LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment.

“Wage and Hour Net Settlement Amount” means 28.571% of the Net Settlement Amount.

“Failure to Recall Net Settlement Amount” means 71.429% of the Net Settlement Amount.

1.28. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.

1.30. “PAGA Period” means the period from May 25, 2021 through December 15, 2022.

1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.32. “PAGA Notices” collectively refers to the letters to the LWDA and Defendants providing notice pursuant to Labor Code section 2699.3, subd.(a), as follows: (i) Bendorf’s July 26, 2021 letter; (ii) Janeen Jones (“Jones”), Maria Glancy (“Glancy”), Grace Yambrach (“Yambrach”), and Prather’s September 8, 2021 letter and November 19, 2021 amended letter; and (iii) Marin’s November 8, 2021 letter.

1.33. “PAGA Penalties” means the total amount of PAGA civil penalties (\$100,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$25,000) and 75% to LWDA (\$75,000) in settlement of PAGA claims.

1.34. “Participating Class Members” collectively refers to the Participating Wage and Hour Class Members and Participating Failure to Recall Class Members as follows:

“Participating Wage and Hour Class Members” means Wage and Hour Class Members who do not submit a valid and timely Request for Exclusion.

“Participating Failure to Recall Class Members” means Failure to Recall Class Members who do not submit a valid and timely Request for Exclusion.

1.35. “Pay Period” means any week during which a Class Member worked for the Defendants for at least one day during the Class Period.

1.36. "Plaintiffs" means Theresa Bendorf, Kristy Prather, and Javier Marin.

1.37. "Preliminary Approval" means the Court's order granting preliminary approval of the Settlement.

1.38. "Preliminary Approval Order" means the proposed order granting preliminary approval and approval of PAGA settlement.

1.39. "Released Wage and Hour Class Claims" means the claims being released as described in Paragraphs 5.2 and 5.3 below.

1.40. "Released Failure to Recall Class Claims" means the claims being released as described in Paragraphs 5.4 and 5.5 below.

1.41. "Released PAGA Claims" means the claims being released as described in Paragraph 5.6 below.

1.42. "Released Parties" means SeaWorld Parks & Entertainment, Inc. and Sea World LLC and each of their former and present directors, officers, members, managers, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, related companies, divisions, predecessors, successors, assigns, and joint venturers.

1.43. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.44. "Response Deadline" means 45 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail objections to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond expiration of the Response Deadline.

1.45. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

## **2. RECITALS.**

2.1. On July 26, 2021, Bendorf provided notice to the LWDA and Defendants of her intention to commence an action for civil penalties pursuant to PAGA for Defendants': (1) violation of California Labor Code sections 201, 202, 203, and 227.3 for failure to pay all wages at time of discharge or resignation from employment; (2) violation of California Labor Code section 226(a) for failure to furnish accurate itemized wage statements; (3) violation of California Labor Code section 2810.8 for failure to offer positions in writing to laid-off employees who are qualified for the position within five business days of establishing a position; and (4) violation of California Labor Code sections 226, 432, and 1198.5 for failing to produce employee records for inspection.

2.2. On August 16, 2021, Bendorf filed a Complaint for Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. in the Action against Defendants for civil penalties under PAGA for: (1) failure to timely pay wages upon termination; (2) failure to furnish accurate itemized wage statements; and (3) failure to produce employee records for inspection.

2.3. On August 25, 2021, Bendorf filed a Class Action Complaint entitled *Theresa Bendorf v. Sea World LLC, et al.*, San Diego County Superior Court Case No. 37-2021-00036521-CU-OE-CTL (“*Bendorf Class Action*”) against Defendants for: (1) failure to pay vested vacation wages (Cal. Lab. Code § 227.3); (2) failure to timely pay wages upon termination (Cal. Lab. Code §§ 201, 202, and 203); (3) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226(a)); (4) failure to recall (San Diego Municipal Code §§ 311.0101, et seq.); and (5) unfair competition (Cal. Bus. & Prof. Code §§ 17200, et seq.).

2.4. On September 8, 2021, Jones, Glancy, and Yambrach provided notice to the LWDA and Defendants of their intention to commence an action for civil penalties pursuant to the PAGA for Defendants’ failure to: (1) pay minimum wages; (2) pay overtime wages; (3) provide lawful meal periods; (4) authorize and permit rest periods; (5) timely pay wages upon termination (California Labor Code §§ 201, 202, 203); (6) maintain accurate records; (7) pay vested vacation wages; (8) recall employees; (9) provide accurate itemized wage statements; and (10) reimburse necessary expenses.

2.5. On November 8, 2021, Marin provided notice to the LWDA and Defendants of his intention to commence an action for civil penalties pursuant to PAGA.

2.6. On November 18, 2021, Jones, Glancy, Yambrach, and Prather filed a Class Action Complaint entitled *Janeen Jones, et al. v. Seaworld Parks & Entertainment, Inc.*, San Diego County Superior Court Case No. 37-2021-00049040-CU-OE-CTL (“*Jones Action*”) alleging causes of action against Defendants for (1) violation of San Diego Municipal Code section 311.010, et seq.; (2) wrongful failure to hire in violation of public policy (failure to recall); (3) wrongful failure to hire in violation of public policy (age discrimination); (4) constructive discharge in violation of public policy; (5) failure to pay vested vacation wages (Labor Code § 227.3); (6) failure to pay minimum wages; (7) failure to pay overtime wages; (8) failure to provide lawful meal periods; (9) failure to authorize and permit rest periods; (10) failure to timely pay wages upon termination (Labor Code §§ 201, 202, 203); (11) failure to provide accurate itemized wage statements; (12) violation of the unfair competition law (Cal. Bus. & Prof. Code §17200, et seq.); and (13) civil penalties under the Private Attorneys General Act, Labor Code section 2698 et seq.

2.7. On November 19, 2021, Jones, Glancy, Yambrach, and Prather sent an amended PAGA notice to the LWDA and Defendants to add Prather to their PAGA claim and to provide notice of the allegations set forth in the Class Action Complaint and the Labor Code violations stemming therefrom.

2.8. On November 10, 2021, Marin filed a class action complaint entitled *Javier Marin v. Sea World LLC*, San Diego County Superior Court Case No. 37-2021-00047859-CU-OE-CTL (“*Marin Class Action*”), against Defendant Sea World LLC for: (1) violation of Labor Code § 226; and (2) violation of Labor Code § 226.7 and 512.

2.9. On January 10, 2022, Marin filed a separate PAGA complaint entitled *Javier Marin v. Sea World LLC, et al.*, San Diego County Superior Court Case No. 37-2022-00001083-CU-OE-CTL (“*Marin PAGA Action*”).

2.10. Plaintiffs will file a first amended complaint (“First Amended Complaint”) in the Action to effectively consolidate the *Bendorf* Class Action, *Jones* Action, *Marin* Class Action, and *Marin* PAGA Action, and to state additional facts, theories, and allegations giving rise to the Plaintiffs’ claims. The First Amended Complaint alleges causes of action against Defendants for (1) violation of San Diego Municipal Code §§ 311.010, *et seq.*; (2) wrongful failure to hire in violation of public policy (failure to recall); (3) wrongful failure to hire in violation of public policy (age discrimination); (4) constructive discharge in violation of public policy; (5) wrongful termination in violation of public policy; (6) failure to pay vested vacation wages (Labor Code § 227.3); (7) breach of contract; (8) breach of the implied covenant of good faith and fair dealing; (9) failure to pay minimum wages; (10) failure to pay overtime wages; (11) failure to provide lawful meal periods; (12) failure to authorize and permit rest periods; (13) failure to timely pay wages during employment (Labor Code § 204); (14) failure to timely pay wages upon termination (Labor Code §§ 201, 202, 203); (15) failure to provide accurate itemized wage statements (Labor Code § 226(a)); (16) violation of unfair competition laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (17) civil penalties under the Private Attorneys’ General Act, Labor Code §§ 2698, *et seq.*

2.11. On August 22, 2022, the Parties participated in an all-day mediation presided over by experienced wage and hour mediator, Jeff Krivis. The Parties did not settle that day, however, the Parties continued to engage in extensive adversarial, arms-length negotiations over the weeks following with the assistance of the mediator. This Agreement is the product of a mediator’s proposal.

2.12. Prior to mediation, Plaintiffs obtained, through extensive informal discovery and investigation, policy documents, memoranda, severance policies, data related to the population that was recalled and the population that was not recalled, personnel files, handbooks, data related to new hires and essential personnel, job descriptions, pay data, furlough notices, paystubs, and a sampling of time records and payroll information. Plaintiffs’ counsel also engaged in extensive research and investigation, as well as interviews and discussions with witnesses. Defendants also produced certain demographic data and data points. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.13. The First Amended Complaint will be the operative complaint in the Action (“Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, deny that any aspect of the Action may proceed as a class or representative action, and deny any and all liability for the causes of action alleged.

### **3. MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided in this Paragraph 4.1, Defendants promise to pay \$3,500,000 (three million five hundred thousand dollars and no cents) and no more as the Gross Settlement Amount [except that Defendants will separately pay any and all employer

payroll taxes owed on the Wage Portions of the Individual Class Payments as set forth in Paragraph 4.3]. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the payments stated in Paragraphs 3.2.1 through 3.2.3 from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Service Payments to Class Representative Bendorf of not more than \$7,500, Class Representative Prather of not more than \$5,000, and Class Representative Marin of not more than \$10,000. The Class Representative Service Payments are in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members and Aggrieved Employees. Defendants will not oppose Plaintiffs' requests for Class Representative Service Payments that do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Forms 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be \$1,166,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$35,000. 15.7143% of the attorneys' fees will be paid to BLACKSTONE LAW, APC, 42.14285% of the attorneys' fees will be paid to Farnaes & Lucio, APC and James Hawkins, APLC, and 42.14285% of the attorneys' fees will be paid to Diversity Law Group, Polaris Law Group LLP, and Law Office of Choi & Associates. Defendants will not oppose requests for these payments provided that Class Counsel's fees and expenses do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount on a pro-rata basis. Released Parties shall have no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any portion of the Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds the Released Parties harmless, and indemnifies the Released Parties, from any dispute or controversy regarding any division or sharing of any of these payments.



3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$52,000 except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses are less or the Court approves payment less than \$52,000, the Administrator will allocate the remainder to the Net Settlement Amount on a pro-rata basis.

3.2.4. To Each Participating Class Member: A Participating Class Member may receive an Individual Wage and Hour Class Payment, an Individual Failure to Recall Class Payment, or both.

3.2.4.1. Individual Wage and Hour Class Payments: Each Participating Class Member's Individual Wage and Hour Class Payment is calculated by (a) dividing the Wage and Hour Net Settlement Amount by the total number of Pay Periods worked by all Participating Wage and Hour Class Members during the Wage and Hour Class Covered Period and (b) multiplying the result by each Participating Wage and Hour Class Member's Pay Periods. Payments shall be reduced as necessary to account for the employee's mandatory payroll withholdings. Recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations.

3.2.4.1.1. Tax Allocation of Individual Wage and Hour Class Payments: Each Individual Wage and Hour Class Payment shall be allocated as follows: (a) 20% as Wages; and (b) 80% as Penalties and Interest. The Wage Portions are subject to tax withholding and the Administrator will report such sums on IRS W-2 Forms. The Non-Wage Portions (e.g., penalties and interest) are not subject to wage withholdings and the Administrator will report such sums on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Wage and Hour Class Payments.

3.2.4.2. Individual Failure to Recall Class Payments: Each Participating Class Member's Individual Failure to Recall Class Payment is calculated by dividing the Failure to Recall Net Settlement Amount by the number of Participating Failure to Recall Class Members. Payments shall be reduced as necessary to account for the employee's mandatory payroll withholdings. Recipients of payments pursuant to this Agreement are exclusively responsible for all other tax obligations.

3.2.4.2.1. Tax Allocation of Individual Failure to Recall Class Payments: Each Individual Failure to Recall Class Payment shall be allocated as follows: (a) 20% as Wages; and (b) 80% as Penalties and Interest. The Wage Portions are subject to tax withholding and the Administrator will report such sums on IRS W-2 Forms. The Non-Wage Portions (e.g., penalties and interest) are not subject to wage withholdings and the Administrator will report such sums on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Failure to Recall Class Payments.

3.2.4.3. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.4.4 Any member of the Wage and Hour Class who is also a member of the Failure to Recall Class will be entitled to a share of the Wage and Hour Net Settlement Amount in addition to their share of the Failure to Recall Net Settlement Amount.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$100,000 are to be paid from the Gross Settlement Amount, with 75% (\$75,000) allocated to the LWDA PAGA Payment and 25% (\$25,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing 25% of the PAGA Penalties (i.e., \$25,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods

3.2.5.2. Each Individual PAGA Payment will be allocated as 100% penalties. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Escalator Clause. Based on a review of their records to date, Defendants represent that there are approximately 86,000 pay periods in the period from May 25, 2021 to November 30, 2022. If the number of pay periods in the Wage and Hour Class Covered Period exceeds 88,125 by more than 5%, Plaintiffs or Defendants may, at their own discretion, withdraw from this settlement, and return the proceedings to the status quo ante.

Defendants further represent that there are approximately 2,250 Failure to Recall Class Members. If the number of Failure to Recall Class Members exceeds 2,250 by more than 10%, Plaintiffs or Defendants may, at their own discretion, withdraw from this settlement, and return the proceedings to the status quo ante.

4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted Class Member

identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts and in good faith to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount and the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 21 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom a Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom a Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payments and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all Participating Class Members and/or Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and/or Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.

4.4.3. For any Individual Class Payment check or Individual PAGA Payment check that is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

**5. RELEASES OF CLAIMS.** Upon the Effective Date and contingent upon fully funding the entire Gross Settlement Amount and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, Plaintiffs, Participating Class Members, and Aggrieved Employees will release claims against all Released Parties as follows:

5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge the Released Parties from all claims, transactions, or occurrences from the beginning of time to the date of signing this Agreement ("Plaintiffs' Release). The Plaintiffs' Release includes any and all claims and causes of action arising from the employment relationship with Defendants or any Released Party, including, without limitation, claims for wrongful termination, discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or the California Labor Code. The Plaintiffs' Release also includes a waiver of California Civil Code Section 1542. The Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and will remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. Release by Participating Wage and Hour Class Members: All Participating Wage and Hour Class Members will be bound by a release of all claims and causes of action falling within the definition of "Released Wage and Hour Class Claims" (as defined below), whether known or unknown, and irrespective of the factual or legal basis for such claims ("Wage and Hour Class Release"). However, to be clear, the scope of the release is limited to the Released Wage and Hour Class Claims as set forth in the Action. Plaintiffs and the Participating Wage and Hour Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action, and legal theories of recovery in the Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Wage and Hour Class Claims, and by virtue of this Agreement, Plaintiffs and the Participating Wage and Hour Class Members shall be

deemed to have, and by operation of the Judgment entered by the Court, shall have, fully, finally, and forever settled and released all of the Released Wage and Hour Class Claims.

5.3. Released Wage and Hour Class Claims: All causes of action and factual or legal theories that were alleged in the Operative Complaint in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief: (a) failure to pay all wages due, including minimum wages, straight time, and overtime wages; (b) failure to provide proper meal periods and to properly provide premium pay at the regular rate in lieu thereof; (c) failure to provide proper rest periods and to properly provide premium pay at the regular rate in lieu thereof; (d) failure to pay all wages timely at the time of furlough, separation, or termination, and/or during employment; (e) failure to provide complete, accurate, and/or properly formatted wage statements; (f) failure to pay vested vacation wages; (g) unfair competition and business practices (in violation of Cal. Bus. & Prof. Code Sec. 17200, et seq.) that are and/or could have been premised on the claims, causes of action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint in the Action; and (h) all damages, penalties, interest, and other amounts recoverable under said claims, causes of action, or legal theories of relief (collectively, the “Released Wage and Hour Class Claims”). The period of the release shall extend to the limits of the Wage and Hour Class Covered Period. The res judicata effect of the Judgment will be the same as that of the release.

5.4. Release by Participating Failure to Recall Class Members: All Participating Failure to Recall Class Members will be bound by a release of all claims and causes of action falling within the definition of “Released Failure to Recall Class Claims” (as defined below), whether known or unknown, and irrespective of the factual or legal basis for such claims (“Failure to Recall Class Release”). However, to be clear, the scope of the release is limited to the Released Failure to Recall Class Claims as set forth in the Action. Plaintiffs and Participating Failure to Recall Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action, and legal theories of recovery in the Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Failure to Recall Class Claims, and by virtue of this Agreement, Plaintiffs and the Participating Failure to Recall Class Members shall be deemed to have, and by operation of the Judgment entered by the Court, shall have, fully, finally, and forever settled and released all of the Released Failure to Recall Class Claims.

5.5. Released Failure to Recall Class Claims: All causes of action and factual or legal theories that were alleged in the Operative Complaint in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief in connection with any Covid-19-related furlough, lay-off, termination, or separation from employment: (a) breach of written contract; (b) breach of the implied covenant of good faith and fair dealing; (c) violation of section 311.0101 et seq. of the San Diego Municipal Code; (d) wrongful termination in violation of public policy; (e) wrongful failure to hire in violation of public policy; (f) constructive discharge in violation of public policy; (g) unfair competition and business practices (in violation of Cal. Bus. & Prof. Code Sec. 17200, et seq.) that are and/or could have been premised on the claims, causes of action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint in the Action; and (h) similar claims under other state laws, including all damages, punitive damages, penalties, interest, and other amounts recoverable under said claims, causes of action, or legal

theories of relief (collectively, the “Released Failure to Recall Class Claims”). The period of the release shall extend to the limits of the Failure to Recall Class Covered Period. The res judicata effect of the Judgment will be the same as that of the release.

5.6. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notices during the PAGA Period (“Released PAGA Claims”).

## **6. MOTION FOR PRELIMINARY APPROVAL.**

6.1. Responsibilities of Counsel. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”). Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval at least 5 days prior to filing.

6.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

## **7. SETTLEMENT ADMINISTRATION.**

7.1. Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial, or otherwise with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4. Notice to Class Members.

7.4.1. No later than 3 business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Wage and Hour Class Members, the number of Failure to Recall Class Members, the number of Aggrieved Employees, the number of Pay Periods, and the number of PAGA Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than 15 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via First-Class U.S. Mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Wage and Hour Class Payment, Failure to Recall Class Payment, and/or Individual PAGA Payment payable to the Class Member, and the number of Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, challenges to Pay Periods and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendants, or Class Counsel are contacted by or otherwise discover any persons who believe they should have been included in the Class Data and should have received a Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

#### 7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates

the Class Member's election to be excluded from the Settlement and includes the Class Member's full name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline and must be signed by the Class Member.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3. Every Class Member who does not submit a valid and timely Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' releases under Paragraphs 5.2, 5.3, 5.4, and 5.5 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. Each Participating Class Member is subject to the benefits and releases of the Class(es) to which he or she is a member.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.6 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Pay Periods and PAGA Pay Periods. Each Wage and Hour Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Pay Periods and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Pay Periods and/or PAGA Pay Periods. The Administrator's determination of each Class Member's allocation of Pay Periods and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the calculation of Pay Periods and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7. Objections to Settlement.



7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or the amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payments.

7.7.2. Participating Class Members may send written objections to the Administrator by fax, email, or mail. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). Participating Class Members who submit written objections may also appear in Court (or hire an attorney to appear in Court at their own cost) to discuss their objections at the Final Approval Hearing. The Administrator must notify Class Counsel and Defense Counsel within two business days of any objections received.

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address, and Toll-Free Number. The Administrator will establish, maintain, and use an internet website (or a portion of its existing website) to post information of interest to Class Members, including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, the Class Notice, the Preliminary Approval, the Final Approval, and the Judgment. The Administrator will also maintain and monitor an email address, facsimile number, and a toll-free telephone number to receive Class Member calls, faxes, and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the full names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Pay Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4. Administrator's Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notices, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written objections, and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.5. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare and submit to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

**8. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a proposed Final Approval and a proposed Judgment (collectively, "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

8.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

8.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members and/or Aggrieved Employees), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

8.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

8.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement and specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-Judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

8.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administrator expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

## **9. ADDITIONAL PROVISIONS.**

9.1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Action or the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of the Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

9.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants, and Defense Counsel separately agree that, until the Motion for Preliminary Approval is filed, they and each of them will not disclose, disseminate, and/or publicize, or cause or permit another person to disclose, disseminate, or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5)

in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This Paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

9.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

9.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

9.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

9.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

9.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in the Settlement.

9.8. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in the Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

9.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for the Parties and approved by the Court.

9.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

9.11. Applicable Law. All terms and conditions of this Agreement and its exhibit will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

9.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

9.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered in the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

9.14. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

9.15. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

9.16. Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

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jgenish@blackstonepc.com  
Miriam L. Schimmel  
mschimmel@blackstonepc.com  
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*Attorneys for Plaintiff Javier Marin*

To Defendants:

Aaron H. Cole  
Ogletree Deakins  
400 South Hope Street, Suite 1200  
Los Angeles, CA 90071  
Telephone: 213-438-5846

9.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email, which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed

counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

9.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED.

**PLAINTIFFS**

Dated: 10/26/2023



\_\_\_\_\_  
Theresa Bendorf

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kristy Prather

Dated: \_\_\_\_\_

\_\_\_\_\_  
Javier Marin

**DEFENDANT SEAWORLD PARKS & ENTERTAINMENT**

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DEFENDANT SEA WORLD LLC**

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

**BLACKSTONE LAW, APC**

Dated: October 26, 2023

Miriam L. Schimmel  
Miriam L. Schimmel  
*Attorneys for Plaintiff Theresa Bendorf*

**JAMES HAWKINS APLC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
James R. Hawkins  
*Attorneys for Plaintiff Kristy Prather*

**DIVERSITY LAW GROUP, P.C.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Larry W. Lee  
*Attorneys for Plaintiff Javier Marin*

**POLARIS LAW GROUP**

Dated: \_\_\_\_\_

\_\_\_\_\_  
William L. Marder  
*Attorneys for Plaintiff Javier Marin*

**LAW OFFICES OF CHOI &  
ASSOCIATES**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Edward W. Choi  
*Attorneys for Plaintiff Javier Marin*

**FARNAES & LUCIO, APC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Malte L. L. Farnaes



counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

9.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.


IT IS SO AGREED.

**PLAINTIFFS**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Theresa Bendorf

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Kristy Prather

Dated: \_\_\_\_\_

\_\_\_\_\_  
Javier Marin

**DEFENDANT SEAWORLD PARKS & ENTERTAINMENT**

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DEFENDANT SEA WORLD LLC**

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

**BLACKSTONE LAW, APC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Miriam L. Schimmel  
*Attorneys for Plaintiff Theresa Bendorf*

**JAMES HAWKINS APLC**

Dated: 10/26/2023

  
\_\_\_\_\_  
James R. Hawkins  
*Attorneys for Plaintiff Kristy Prather*

**DIVERSITY LAW GROUP, P.C.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Larry W. Lee  
*Attorneys for Plaintiff Javier Marin*

**POLARIS LAW GROUP**

Dated: \_\_\_\_\_

\_\_\_\_\_  
William L. Marder  
*Attorneys for Plaintiff Javier Marin*

**LAW OFFICES OF CHOI &  
ASSOCIATES**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Edward W. Choi  
*Attorneys for Plaintiff Javier Marin*

**FARNAES & LUCIO, APC**

Dated: 10/26/2023

  
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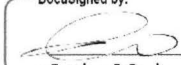
Dated: \_\_\_\_\_

\_\_\_\_\_  
Theresa Bendorf

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kristy Prather

Dated: 10/26/2023

DocuSigned by:  
  
\_\_\_\_\_  
Javier Marin

**DEFENDANT SEAWORLD PARKS & ENTERTAINMENT**

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Name:  
\_\_\_\_\_

Title:  
\_\_\_\_\_

**DEFENDANT SEA WORLD LLC**

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Name:  
\_\_\_\_\_

Title:  
\_\_\_\_\_

Approved as to Form:

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Dated: \_\_\_\_\_

\_\_\_\_\_  
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*Attorneys for Plaintiff Theresa Bendorf*


**JAMES HAWKINS APLC**

Dated: \_\_\_\_\_

\_\_\_\_\_  
James R. Hawkins  
*Attorneys for Plaintiff Kristy Prather*


**DIVERSITY LAW GROUP, P.C.**

Dated: 10/26/23

  
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Larry W. Lee  
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ASSOCIATES**

Dated: 10/26/23

  
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*Attorneys for Plaintiff Javier Marin*

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**PLAINTIFFS**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Theresa Bendorf

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kristy Prather

Dated: \_\_\_\_\_

\_\_\_\_\_  
Javier Marin

**DEFENDANT SEAWORLD PARKS & ENTERTAINMENT**

Dated: 12/4/23

Signed: \_\_\_\_\_  
Name: JAMES HUGHES

Title: CHIEF HUMAN RESOURCES OFFICER

**DEFENDANT SEA WORLD LLC**

Dated: 11/13/23

Signed: \_\_\_\_\_  
Name: JIM LAKE

Title: Park President

Christina M. Lucio  
*Attorneys for Plaintiff Kristy Prather*

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



Dated: 12/4/2023

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Aaron H. Cole  
*Attorneys for Defendants SeaWorld Parks  
& Entertainment, Inc. & Sea World LLC*

# Exhibit A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND  
HEARING DATE FOR FINAL COURT APPROVAL**

*Theresa Bendorf, et al. v. Sea World LLC, et al.*  
San Diego Superior Court Case No. 37-2021-00034922-CU-OE-CTL

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***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

**You may be eligible to receive money** from a proposed class action lawsuit against Sea World LLC and SeaWorld Parks & Entertainment, Inc. (collectively, "SeaWorld") entitled *Theresa Bendorf, et al. v. SeaWorld LLC, et al.*, San Diego Superior Court Case No. 37-2021-0034922-CU-OE-CTL (the "Action"). The Action was filed by former SeaWorld employees Theresa Bendorf, Kristy Prather, and Javier Marin (collectively, "Plaintiffs") and seeks payment of alleged (1) unpaid minimum wages, straight time wages, overtime wages, vested vacation wages, meal and rest premium pay, penalties, and interest on behalf of all current and former non-exempt employees of SeaWorld in California from May 25, 2021 through December 15, 2022 (the "Wage and Hour Class Members"), and all current and former employees of SeaWorld in California from November 18, 2019 through December 15, 2022 who were temporarily or permanently furloughed in connection with the COVID-19 pandemic and who SeaWorld allegedly failed to recall or reinstate to their prior employment status, except those individuals who previously entered into release agreements with SeaWorld (the "Failure to Recall Class Members") (collectively, "Class Members"); and (2) penalties under the California Private Attorney General Act ("PAGA") for all current and former non-exempt employees of SeaWorld in California from May 25, 2021 through December 15, 2022 (the "Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring SeaWorld to fund Individual Class Payments to Wage and Hour Class Members and Failure to Recall Class Members, and (2) a PAGA Settlement requiring SeaWorld to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on SeaWorld's records, and the Parties' current assumptions, **your Individual Wage and Hour Class Payment is estimated to be \$ [REDACTED] (less withholding); your Individual Failure to Recall Class Payment is estimated to be \$ [REDACTED] (less withholding); and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual Failure to Recall Class Payment or Individual PAGA Payment, then according to SeaWorld's records you are not eligible for an Individual Failure to Recall Class Payment or Individual PAGA Payment under the Settlement because you are not a member of the Failure to Recall Class or didn't work during the PAGA Period.)

The above estimates are based on SeaWorld's records showing that **you worked [REDACTED] Pay Periods** during the Wage and Hour Covered Period from May 25, 2021 through December 15, 2022, **you worked [REDACTED] PAGA Pay Periods** during the PAGA Period from May 25, 2021 through December 15, 2022, and you were a Failure to Recall Class Member during the Failure to Recall Class Covered Period from November 18, 2019 through December 15, 2022. If you believe that you worked more Pay Periods and/or PAGA Pay Periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). If the Court finally approves the Settlement, SeaWorld will make payments under the Settlement and Class Members who do not opt-out



(“Participating Class Members”) and Aggrieved Employees will give up their rights to assert certain claims against SeaWorld.

If you worked for SeaWorld during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert the Released Wage and Hour Class Claims, Released Failure to Recall Class Claims, and the Released PAGA Claims against SeaWorld. (See Section 3 of this Notice and Paragraphs 5.2-5.6 of the Settlement Agreement)

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment (either an Individual Wage and Hour Class Payment or Individual Failure to Recall Class Payment). You will, however, preserve your right to personally pursue Class Period wage claims and recall claims against SeaWorld, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

**SeaWorld will not retaliate against you for any actions you take with respect to the proposed Settlement.**

### SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p><b>You Don’t Have to Do Anything to Participate in the Settlement</b></p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims and recall claims against SeaWorld that are covered by this Settlement. See Section 3 of this Notice.</p>
<p><b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b> <b>The Opt-out Deadline is</b> [REDACTED]</p>	<p>If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. SeaWorld must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue the Released PAGA Claims (defined below).</p>
<p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b> <b>Written Objections Must be Submitted by</b> [REDACTED]</p>	<p>Participating Class Members can object to any aspect of the proposed Class Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.</p>
<p><b>You Can Participate in the</b> [REDACTED] <b>Final Approval Hearing</b></p>	<p>The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone, or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>

<p><b>You Can Challenge the Calculation of Your Pay Periods/PAGA Pay Periods</b></p> <p><b>Written Challenges Must be Submitted by [REDACTED]</b></p>	<p>The amount of your Individual Wage and Hour Class Payment and Individual PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many PAGA Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Pay Periods and number of PAGA Pay Periods you worked according to SeaWorld’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.</p>
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**1. WHAT IS THE ACTION ABOUT?**

Plaintiffs are former SeaWorld employees. The Action accuses SeaWorld of violating California labor laws by failing to pay minimum wages, straight time wages, overtime wages, and vested vacation wages; failing to provide meal and rest periods and to provide premium pay at the regular rate of pay in lieu thereof; failing to pay all wages timely at the time of furlough, separation, or termination, and during employment; and failing to provide complete, accurate and properly formatted wage statements. Based on the same claims, Plaintiffs have also asserted a claim for unfair competition and business practices under Cal. Bus. & Prof. Code § 17200, et seq. and for civil penalties under PAGA.

Plaintiffs also accuse SeaWorld of breach of written contract, breach of the implied covenant of good faith and fair dealing, wrongful termination in violation of public policy, wrongful failure to hire in violation of public policy, constructive discharge in violation of public policy, and violation of section 311.0101 et seq. of the San Diego Municipal Code for SeaWorld’s alleged failure to recall or reinstate individuals who were temporarily or permanently furloughed in connection with the COVID-19 pandemic and who SeaWorld subsequently failed to recall or reinstate to their prior employment status.

Plaintiffs are represented by the following attorneys in the Action (i.e., Class Counsel): Jonathan M. Genish and Miriam L. Schimmel of Blackstone Law, APC; Larry W. Lee of Diversity Law Group; James R. Hawkins of James Hawkins APLC; Christina M. Lucio and Malte L. L. Farnaes of Farnaes & Lucio, APC; William L. Marder of Polaris Law Group; and Edward W. Choi of the Law Offices of Choi & Associates.

SeaWorld strongly denies violating any laws, failing to recall or reinstate any employees, or failing to pay any wages and contends it complied with all applicable laws.

**2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

So far, the Court has made no determination whether SeaWorld or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and SeaWorld hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Settlement Agreement” or “Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and SeaWorld have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, SeaWorld does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) SeaWorld has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

**3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

1. SeaWorld Will Pay \$3.5 Million as the Gross Settlement Amount (“Gross Settlement Amount”).

SeaWorld has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments (including Individual Wage and Hour Class Payments and Individual Failure to Recall Class Payments), Individual PAGA Payments, Class Representative Service Payments, Class Counsel’s attorney’s fees and litigation expenses, the Administrator’s expenses, and penalties to be paid to the LWDA.

The Gross Settlement Amount includes the Wage and Hour Class Settlement Amount of \$1,000,000 and the Failure to Recall Class Settlement Amount of \$2,500,000.

Assuming the Court grants Final Approval, SeaWorld will fund the Gross Settlement Amount not more than 21 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters the Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement Amount.

At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to \$1,166,666.67 (1/3 of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$35,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses in the Action without payment.

B. Up to \$7,500 to Plaintiff Bendorf, \$5,000 to Plaintiff Prather, and \$10,000 to Plaintiff Marin as Class Representative Service Payments for filing the Action, working with Class Counsel, and representing the Class. The Class Representative Service Payments will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payments and any Individual PAGA Payments.

C. Up to \$52,000 to the Administrator for services administering the Settlement.

D. Up to \$100,000 for PAGA Penalties, allocated 75% to the LWDA and 25% to the Aggrieved Employees.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Amount Distributed to Participating Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the “Net Settlement Amount”) by making Individual Wage and Hour Class Payments equal to [REDACTED] % of the Net Settlement Amount (approximately \$ [REDACTED]) (“Wage and Hour Net Settlement Amount”) to Participating Wage and Hour Class Members and Individual Failure to Recall Class Payments equal to [REDACTED] % of the Net Settlement Amount (approximately \$ [REDACTED]) (“Failure to Recall Net Settlement Amount”) to Participating Failure to Recall Class Members.

4. Taxes Owed on Payments to Participating Class Members. Plaintiffs and SeaWorld are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. SeaWorld will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will

report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and SeaWorld have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and SeaWorld have agreed that, in either case, the Settlement will be void: SeaWorld will not pay any money and Class Members will not release any claims against SeaWorld.

7. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, process Requests for Exclusion, challenges over Pay Periods and/or PAGA Pay Periods, and written objections, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

8. Participating Class Members' Release. After the Judgment is final and SeaWorld has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the Class claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against SeaWorld or the Released Parties for wages based on the Class Period facts, as alleged in the Action and resolved by the Settlement.

The Participating Wage and Hour Class Members will be bound by the following release:

All causes of action and factual or legal theories that were alleged in the Operative Complaint in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief: (a) failure to pay all wages due, including minimum wages, straight time, and overtime wages; (b) failure to provide proper meal periods and to properly provide premium pay at the regular rate in lieu thereof; (c) failure to provide proper rest periods and to properly provide premium pay at the regular rate in lieu thereof; (d) failure to pay all wages timely at the time of furlough, separation, or termination, and/or during employment; (e) failure to provide complete, accurate, and/or properly formatted wage statements; (f) failure to pay vested vacation wages; (g) unfair competition and business practices (in violation of Cal. Bus. & Prof. Code Sec. 17200, et seq.) that are and/or could have been premised on the claims, causes of action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint in the Action; and (h) all damages, penalties, interest, and other amounts recoverable under said claims, causes of action, or legal theories of relief (collectively, the "Released Wage and Hour Class Claims"). The period of the release shall extend to the limits of the Wage and Hour Class Covered Period from May 25, 2021 through December 15, 2022. The res judicata effect of the Judgment will be the same as that of the release.

The Participating Failure to Recall Class Members will be bound by the following release:

All causes of action and factual or legal theories that were alleged in the Operative Complaint in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint, including all of the following claims for relief in connection with any Covid-19-related furlough, lay-off, termination, or separation from employment: (a) breach of written contract; (b) breach of the implied covenant of good faith and fair dealing; (c) violation of section 311.0101 et seq. of the San Diego Municipal Code; (d) wrongful termination in violation of public policy; (e) wrongful failure to hire in violation of public policy; (f) constructive discharge in violation of public policy; (g) unfair competition and business practices (in violation of Cal. Bus. & Prof. Code Sec. 17200, et seq.) that are and/or could have been premised on the claims, causes of action, or legal theories of relief described above or any of the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint in the Action; and (h) similar claims under other state laws, including all damages, punitive damages, penalties, interest, and other amounts recoverable under said claims, causes of action, or legal theories of relief (collectively, the “Released Failure to Recall Class Claims”). The period of the release shall extend to the limits of the Failure to Recall Class Covered Period from November 18, 2019 through December 15, 2022. The res judicata effect of the Judgment will be the same as that of the release.

9. Aggrieved Employees’ PAGA Release. After the Judgment is final and SeaWorld has fully funded the Gross Settlement and separately paid all employer payroll taxes, Aggrieved Employees will be legally barred from asserting PAGA claims against SeaWorld, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against SeaWorld or the Released Parties based on the PAGA Period facts, as alleged in the Action and resolved by the Settlement.

The Aggrieved Employees will be bound by the following release:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notices during the PAGA Period from May 25, 2021 through December 15, 2022.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Wage and Hour Class Payments. The Administrator will calculate Individual Wage and Hour Class Payments by (a) dividing the Wage and Hour Net Settlement Amount by the total number of Pay Periods worked by all Participating Wage and Hour Class Members during the Wage and Hour Class Covered Period and (b) multiplying the result by each Participating Wage and Hour Class Member’s Pay Periods.

2. Individual Failure to Recall Class Payments. The Administrator will calculate Individual Failure to Recall Class Payments by dividing the Failure to Recall Net Settlement Amount by the number of Participating Failure to Recall Class Members.

3. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$25,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.

4. Pay Period/PAGA Pay Period Challenges. The number of Pay Periods you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in SeaWorld’s records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Pay Periods and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email, or fax. Section 9 of this Notice has the Administrator’s contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept SeaWorld's calculation of Pay Periods and/or PAGA Pay Periods based on SeaWorld's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Pay Period and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and SeaWorld's counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

## 5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Wage and Hour Class Payment, Individual Failure to Recall Class Payment, and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, email address or telephone number, and a simple statement that you do not want to participate in the Class Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Theresa Bendorf, et al. v. SeaWorld, LLC, et al.*, and include your identifying information (full name, address, email address or telephone number, and last four digits of social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## 7. HOW DO I OBJECT TO THE CLASS SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and SeaWorld are asking the Court to approve. At least 16 court days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for attorneys' fees, litigation expenses, and Class Representative Service Payments stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amounts Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [REDACTED] (url) or the Court's website <https://www.roa.sdcourt.ca.gov/roa>.

A Participating Class Member who disagrees with any aspect of the Class Settlement, the Motion for Final Approval, and/or Motion for attorneys' fees, litigation expenses, and Class Representative Service Payments may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is [REDACTED].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Theresa Bendorf, et al. v. SeaWorld, LLC, et al.* and include

your name, current address, email address or telephone number, and last four digits of social security number for verification purposes, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

## 8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [redacted] at [redacted] (time) in Department C-73 of the San Diego Superior Court, located at 330 West Broadway, San Diego, CA 92101. At the Final Approval Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Microsoft Teams (<https://www.sdcourt.ca.gov/sdcourt/civil2/civilvirtualhearings>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [redacted] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## 9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything SeaWorld and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Administrator's website at [redacted] (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://www.roa.sdcourt.ca.gov/roa>, and entering the Case Number for the Action, Case No. 37-2021-00034922.

## DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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**ADMINISTRATOR**

CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

Telephone

Fax

Email

**10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

**11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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