

CLASS ACTION STIPULATION OF SETTLEMENT

IT IS HEREBY STIPULATED AND AGREED, by and between the **Parties**,¹ subject to the approval of the Court, that the **Action** shall be settled and fully resolved pursuant to the terms and conditions set forth in this Class Action Stipulation of Settlement (the “**Stipulation**”):

I. THE ACTION AND REASONS FOR STIPULATED SETTLEMENT

A. On February 13, 2015, **Plaintiffs** Steven Vega and Javier Morrone (“**Plaintiffs**”) initiated a putative class action against Langham Hotels Pacific Corporation (“**Defendant**”) in the Superior Court for the County of Los Angeles, Case No. BC573323. On June 24, 2015, **Plaintiffs** filed a First Amended Class Action Complaint (“**Complaint**”). **Plaintiffs’ Complaint** alleges six causes of action: (1) failure to pay overtime wages (Labor Code sections 510 and 1194); (2) failure to pay premium wages for missed meal and rest periods (Labor Code section 226.7); (3) failure to furnish accurate itemized wage statements (Labor Code section 226); (4) unfair business practices (Business & Professions Code section 17200 *et seq.*); (5) waiting time penalties (Labor Code sections 201, 202, 203); and (6) civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) (Labor Code section 2698, *et seq.*) for alleged violations of Labor Code sections 201, 202, 203, 226, 226.7, and 510. **Plaintiffs** seek to represent a class of persons who are or were non-exempt hourly employees employed by **Defendant** in California from February 13, 2011 to the date of preliminary approval who were distributed any non-discretionary charge to customers by **Defendant** as part of their pay.

B. **Defendant** denies the allegations in the **Complaint**, and continues to deny any liability or wrongdoing of any kind associated with any of the claims alleged in the **Complaint**.

¹ The definition for all capitalized, bold terms can be found in Part II.

C. After the filing of the **Action**, the **Parties** engaged in formal and informal discovery, including depositions and written discovery. Counsel for the **Parties** engaged in extensive discussions about the respective strengths and weaknesses of the claims and defenses. The **Parties** and their attorneys of record participated in a mediation session with the Hon. Peter D. Lichtman (Ret.), an experienced and respected mediator and former judge on the complex court. On February 19, 2016, the **Parties** reached agreement on the material terms of settlement of this **Action** and, after Plaintiffs conducted confirmatory discovery, subsequently memorialized their agreement in a **Memorandum of Understanding**.

D. **Plaintiffs** and **Plaintiffs' Attorneys**, after evaluation of the sharply disputed factual and legal issues relating to the **Parties'** respective positions in the **Action** and taking into account the risks, uncertainties, and expense of continued litigation, as well as the substantial benefits to be received pursuant to the compromise reached by the **Parties** and other relevant considerations, have concluded that a settlement of this **Action** on the terms and conditions set forth in this **Stipulation** is fair, adequate and reasonable, and in the best interests of **Plaintiffs** and the **Class**. It provides a fair, flexible, speedy, cost-effective, and assured procedure for providing a monetary settlement to **Plaintiffs** and the **Class**.

E. **Defendant** and its counsel, taking into account the risks, uncertainties, disruptions and expense involved in the **Action**, and their desire to put this controversy to rest, have concluded that a settlement of the **Action** on the terms and conditions set forth in this **Stipulation** is in the best interest of **Defendant** because it will end and encompass all pending, threatened, or possible litigation or claims by **Plaintiffs** or the **Settlement Class** against **Defendant** that involve or allege the claims that have or could have been asserted in the **Action**.

II. DEFINITIONS

These definitions are applicable to this **Stipulation**.

A. “**Action**” means the lawsuit captioned *Steven Vega and Javier Morrone, individuals on behalf of themselves and others similarly situated, v. Langham Hotels Pacific Corporation, a Delaware corporation, and Does 1 to 10 inclusive*, originally filed on February 13, 2015, in Los Angeles County Superior Court, Case No. BC573323. “**Complaint**” means the First Amended Class Action Complaint filed by **Plaintiffs** in the **Action** on June 24, 2015.

B. “**Class**” or “**Class Members**” means any and all persons who are or were non-exempt hourly employees employed by **Defendant** in California any time during the **Class Period** who were distributed any non-discretionary charge to customers by **Defendant** as part of their pay. “**Class Period**” means February 13, 2011 through the date of preliminary approval.

C. “**Class Representatives Enhancement**” means the additional sum to be paid to **Plaintiffs** as compensation for their role as class representatives, and for the risks and work attendant to that role.

D. “**Defendant**” means defendant Langham Hotels Pacific Corporation.

E. “**Final Judgment**” means the order approving the **Settlement** and this **Stipulation**, and the final determination of the rights of the **Parties** in the **Action** entered pursuant to California Code of Civil Procedure section 664.6 and California Rules of Court rule 3.769(h).

F. “**Final Settlement Date**” means the date on which the **Final Judgment** approving this **Stipulation** becomes final. For purposes of this definition, the **Final Judgment** shall become final:

1. if no appeal is taken, on the date on which the time to appeal has expired; or
2. if any appeal is taken, on the date on which an appeal, including a

petition for rehearing or reargument, petition for review and petition for certiorari or any other form of review, has been finally disposed of in a manner resulting in affirmance of the **Final Judgment**.

G. “**Final Settlement Hearing**” means the hearing to be conducted by the Court to determine whether to enter the **Final Judgment**.

H. “**Gross Settlement Amount**” means the non-reversionary, total settlement amount of six hundred fifty thousand dollars (\$650,000), and includes everything that could be payable to resolve the entire case including **Settlement Payments** to each and every **Settlement Class Member**, the **LWDA Payment**, the **Class Representatives Enhancement**, **Plaintiffs’ Attorneys’ Fees**, **Plaintiffs’ Expenses**, and the **Settlement Administration Costs**. The **Gross Settlement Amount** excludes **Defendant’s** FICA/FUTA payments and any other payroll taxes owing by **Defendant** on the **Gross Settlement Amount**. The **Gross Settlement Amount** also excludes **Defendant’s** legal fees, costs, expenses and/or taxes incurred in the **Action** and/or arising from its obligations under this **Stipulation**, which shall be borne by **Defendant** alone and paid out of separate funds.

I. “**LWDA**” means the California Labor & Workforce Development Agency. “**LWDA Payment**” means the payment of \$2,500 to be made to the **LWDA**, representing 75% of the amount allocated to settlement of **Plaintiffs’** **PAGA** claim.

J. “**Memorandum of Understanding**” means the agreement of all material terms of settlement of this **Action** entered into by the **Parties** on April 26, 2016.

K. “**Net Settlement Amount**” means the figure that shall be determined by deducting the amounts awarded for **Plaintiffs’ Attorneys’ Fees**, **Plaintiffs’ Expenses**, the **Class Representatives Enhancement**, **Settlement Administration Costs** and the **LWDA Payment** from the **Gross Settlement Amount**.

L. “**Notice**” means the Notice of Pendency of Class Action, Proposed Settlement and Final Hearing attached as Exhibit A.

M. “**Objection/Exclusion Deadline Date**” means the date sixty (60) days from the date the **Settlement Administrator** mails the **Notice**. It is the date by which **Class Members** must: (i) mail to the **Settlement Administrator** a written statement objecting to the settlement, or (ii) mail to the **Settlement Administrator** a written request for exclusion if they wish to be excluded from the **Settlement Class**.

N. “**Parties**” means **Plaintiffs** and **Defendant**.

O. “**Plaintiffs**” means plaintiffs Steven Vega and Javier Morrone on behalf of themselves and others similarly situated.

P. “**Plaintiffs’ Attorneys**” means Hayes Pawlenko LLP.

Q. “**Plaintiffs’ Attorneys’ Fees**” means the amount awarded to the **Plaintiffs’ Attorneys** by the Court for prosecuting the **Action**.

R. “**Plaintiffs’ Expenses**” means all of those expenses and costs incurred in connection with the **Action** by or on behalf of **Plaintiffs** or **Plaintiffs’ Attorneys**, excluding **Settlement Administration Costs**.

S. “**Preliminary Approval Date**” means the date of entry of the Court’s order granting preliminary approval of the settlement.

T. “**Released Parties**” means **Defendant** and its former and present parents, subsidiaries and affiliated companies and entities and its current, former and future owners, officers, directors, members, managers, employees, consultants, partners, affiliates, subsidiaries, shareholders, attorneys, insurers, joint venturers and agents, any successors, assigns, or legal representatives and any individual or entity who or which could be jointly liable with **Defendant** and all persons or entities acting by, through under or in concert with any of them.

U. “**Settlement Administrator**” means a third party vendor as mutually designated by the **Parties** to effectuate the processing and payment of **Settlement Payments** and to administer the settlement. “**Settlement Administration Costs**” means the fees and costs of any type incurred or charged by the **Settlement Administrator**.

V. “**Settlement Class**” or “**Settlement Class Member**” means those persons who are members of the **Class** and who have not properly and/or timely requested to be excluded from the **Settlement Class**. “**Settlement Payments**” means the amounts to be paid to individual **Settlement Class Members** pursuant to this **Stipulation**.

W. “**Settlement Class Released Claims**” means the causes of action pled in the **Complaint** or that could have been pled based on the facts alleged in the **Complaint**.

III. SETTLEMENT TERMS

The **Parties** enter into this **Stipulation** and agree as follows:

A. Class Certification

For the purposes of this **Stipulation** only, the **Parties** have agreed to the certification of a conditional **Class** to facilitate class settlement. The designation of the **Class** is expressly made solely for this proposed **Stipulation** and is without prejudice to the issues of whether this lawsuit can properly be maintained as a class action. The **Parties** specifically reserve the right, should this **Stipulation** become inoperative for any reason, to raise and litigate any and all issues as to whether this **Action** can properly be maintained as a class action. The certification of the **Class** shall be effective only with respect to the **Settlement** of the **Action**. In the event that the **Stipulation** is terminated pursuant to its terms or the **Final Settlement Date** does not occur for any reason, the certification of the **Class** shall be vacated, and the **Action** shall proceed as it existed prior to execution of this **Stipulation**.

B. Settlement Consideration

For and in consideration of the mutual promises contained herein, **Defendant** agrees to pay the **Gross Settlement Amount** in complete settlement of the claims asserted in the **Action**. **Defendant** agrees to deliver the **Gross Settlement Amount** to the **Settlement Administrator** within fifteen (15) days after the **Final Settlement Date**. Other than the **Gross Settlement Amount** and its employer-side tax obligations for the wage portion of the **Settlement Payments**, **Defendant** shall not be called upon or

required to contribute additional monies.

C. Plaintiffs' Attorneys' Fees and Plaintiff's Expenses

For the purposes of settlement only, **Defendant** agrees that **Plaintiffs' Attorneys** are entitled to an award of reasonable attorneys' fees and costs. **Defendant** also acknowledges that the **Class** possesses a potential claim for reasonable attorneys' fees and costs pursuant to, *inter alia*, the California Labor Code. The **Parties** agree that any and all such claims for reasonable attorneys' fees and costs have been settled in this **Stipulation** and shall be paid from the **Gross Settlement Amount**. **Plaintiffs' Attorneys' Fees** are to compensate **Plaintiffs' Attorneys** for all work already performed in this **Action**, and all remaining work to be performed in perfecting the settlement, securing Court approval of the settlement, making sure the settlement is fairly administered and implemented, and obtaining the **Final Judgment**.

Defendant understands that **Plaintiffs' Attorneys** will apply to the Court for an award of **Plaintiffs' Attorneys' Fees** and **Plaintiffs' Expenses**. **Defendant** agrees not to oppose **Plaintiffs' Attorneys'** application for a reasonable award of **Plaintiffs' Attorneys' Fees** in a total amount not to exceed one-third (1/3) of the **Gross Settlement Amount**, *i.e.*, two hundred sixteen thousand six hundred sixty six dollars and 66 cents (\$216,666.66), and **Plaintiffs' Expenses** in a total amount not to exceed twenty five thousand dollars (\$25,000). **Plaintiffs' Attorneys' Fees** and **Plaintiffs' Expenses** shall be paid to **Plaintiffs' Attorneys** within thirty (30) days after the **Final Settlement Date**.

D. Class Representatives Enhancement

For the purposes of settlement only, **Defendant** agrees that **Plaintiffs** are entitled to a reasonable enhancement award to be paid from the **Gross Settlement Amount** as compensation for their role as class representatives, and for the risks and work attendant to that role. **Defendant** agrees not to oppose a request that **Plaintiffs** each be paid six thousand five hundred dollars (\$6,500), for a total **Class Representatives Enhancement** of thirteen thousand dollars (\$13,000). The **Class Representatives Enhancement** shall

be paid within thirty (30) days after the **Final Settlement Date**.

E. LWDA Payment

For the purposes of settlement only, the **Parties** agree to allocate three thousand three hundred thirty three dollars and thirty three cents (\$3,333.33) from the **Gross Settlement Amount** toward settlement of **Plaintiffs'** PAGA claim, seventy five percent of which, *i.e.*, two thousand five hundred dollars (\$2,500.00), shall be paid to the **LWDA**. The **LWDA Payment** shall be paid within thirty (30) days after the **Final Settlement Date**.

F. Settlement Administration Costs

The **Parties** agree to jointly select a **Settlement Administrator** to administer the settlement. The **Parties** further agree that the **Settlement Administration Costs** charged by the **Settlement Administrator**, not to exceed twenty five thousand dollars (\$25,000), shall be paid from the **Gross Settlement Amount**. The **Settlement Administration Costs** shall be paid within thirty (30) days after the **Final Settlement Date**.

G. Release of Claims

For and in consideration of the mutual promises contained herein, **Plaintiffs** and the **Settlement Class Members** fully and finally release, as of the **Preliminary Approval Date**, the **Released Parties** from the **Settlement Class Released Claims**. In addition, **Plaintiffs**, solely on behalf of themselves in their individual capacities only and not in their representative capacities on behalf of the **Settlement Class Members**, fully and finally release, as of the **Preliminary Approval Date**, the **Released Parties** from any and all claims whatsoever, known or unknown, to the fullest extent permitted by law, and waive the provisions, rights and benefits of section 1542 of the California Civil Code, which provides:

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

H. Cessation of Mandatory Tip Pooling

For and in consideration of the mutual promises contained herein, **Defendant** agrees to cease requiring **Class Members** to pool their tips or gratuities.

IV. SETTLEMENT ADMINISTRATION

A. Settlement Payments

1. **Class Members** are not required to submit a proof of claim form as a condition of receiving a **Settlement Payment**. Instead, **Settlement Class Members** shall automatically receive a pro rata share of the **Net Settlement Amount**. The individual **Settlement Class Member's** payment shall be calculated by the **Settlement Administrator** by dividing the **Net Settlement Amount** distributable to the **Settlement Class** by the total overtime hours that have accrued for the **Settlement Class** during the **Class Period** and multiplying that amount by the number of overtime hours worked by the individual **Settlement Class Member** during the **Class Period**. Overtime hours will be separately and distinctly calculated for each **Settlement Class Member**; periods of leaves of absence will be excluded. **Settlement Class Members** will have an opportunity to dispute the number of qualified overtime hours worked calculated by the **Settlement Administrator**. However, the **Settlement Administrator's** determination shall be conclusive and binding on all **Settlement Class Members** and **Parties**.

2. All **Settlement Payments** shall be allocated as follows: one-third (1/3) to wages, subject to applicable withholdings, to be reported on a W-2 form; one-third (1/3) to interest and one-third (1/3) to penalties, not subject to withholdings and reported on a 1099 form to be issued by the **Settlement Administrator**. The **Parties** agree that no taxes will be withheld or paid by **Defendant** with respect to the **Settlement Payments** allocated to interest or penalties. Each individual **Settlement Class Member** shall be responsible for his/her share of taxes due on the portion of his or her **Settlement Payment**. The **Parties** acknowledge and agree that proper information reporting will be made to the appropriate taxing authorities regarding all payments made pursuant to this

Stipulation.

3. **Settlement Payments** from the **Net Settlement Amount** shall be paid to **Settlement Class Members** within thirty (30) days after the **Final Settlement Date**. If any **Settlement Class Member** does not cash his/her settlement check within one hundred twenty (120) days after the **Settlement Administrator** mails the **Settlement Payment** to the **Settlement Class Member**, the **Settlement Administrator** shall deposit each such **Settlement Class Member's Settlement Payment** into the appropriate State of California unclaimed property fund on the **Settlement Class Member's** behalf; provided, however, that if the gross amount of the uncashed settlement checks equals or exceeds three thousand dollars (\$3,000), the uncashed settlement checks shall be reallocated and distributed on a pro rata basis to the **Settlement Class Members** who could be located and who cashed checks. The check-cashing deadline shall be printed on the settlement check.

B. Notice of Settlement

1. **Notice** in the form attached hereto as Exhibit A, and as approved by the Court, shall be provided to the **Class** in both English and Spanish.

2. Within fifteen (15) days after the **Preliminary Approval Date**, the **Defendant** shall provide the **Settlement Administrator** with the names, social security numbers, most current mailing addresses, and total overtime hours worked by each **Class Member** during the **Class Period**.

3. Within thirty (30) days after the **Preliminary Approval Date**, the **Settlement Administrator** shall, using the information provided by the **Defendant** along with any updated information obtained from the National Change of Address database which the **Settlement Administrator** shall use to confirm mailing information, mail the **Notice** to all identified **Class Members** by first-class, regular U.S. Mail to the most recent address known for each **Class Member**. For **Notices** returned as undeliverable, the **Settlement Administrator** shall conduct one or more skip traces, then send

additional **Notices** to any new address identified. Upon completion of these steps by the **Settlement Administrator**, the **Parties** shall be deemed to have satisfied their obligation to provide the **Notice** to the **Class**.

C. Objection and Exclusion Procedures

1. **Class Members** who wish to object to the settlement must mail to the **Settlement Administrator**, on or before the **Objection/Exclusion Deadline Date**, a written statement objecting to the settlement. Any written statement objecting to the settlement that is not postmarked to the **Settlement Administrator** on or before the **Objection/Exclusion Deadline Date** shall be of no force and effect and shall be disregarded. **Class Members** who fail to timely mail to the **Settlement Administrator** a written objection to the settlement shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

2. **Class Members** who wish to exclude themselves from the **Settlement Class** must mail to the **Settlement Administrator**, on or before the **Objection/Exclusion Deadline Date**, a written statement requesting exclusion containing the **Class Member's** name, social security number, address and telephone number. Any written request for exclusion not postmarked to the **Settlement Administrator** on or before the **Objection/Exclusion Deadline Date** and/or not containing the **Class Member's** name, social security number, address and telephone number shall be of no force and effect and shall be disregarded. **Class Members** who fail to mail to the **Settlement Administrator** a valid and timely written request for exclusion on or before the **Objection/Exclusion Deadline Date** shall be deemed a **Settlement Class Member** and bound by all terms of the settlement and any **Final Judgment** entered in the **Action** if the settlement is approved by the Court, regardless of whether they have objected to the settlement. Any **Class Member** who timely mails a valid written request for exclusion to the **Settlement Administrator** will not be a

Settlement Class Member, will not receive a **Settlement Payment**, and will not have standing to object to the settlement.

3. No later than ten (10) days before the **Final Settlement Hearing**, the **Settlement Administrator** shall provide the **Parties** with a complete and accurate list of the names of all **Class Members** who have properly requested exclusion from the **Settlement Class** and/or who have submitted timely objections to the settlement along with copies of all written objections to the settlement.

D. Notice of Final Judgment

A copy of the Court's **Final Judgment** shall be posted on the **Settlement Administrator's** website.

V. ADDITIONAL TERMS OF SETTLEMENT

A. Counterparts

This **Stipulation** may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Facsimile signatures may be used for the same purposes as an original. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this **Stipulation**.

B. Entire Agreement

After this **Stipulation** is fully executed by all **Parties** and their attorneys of record, this **Stipulation** shall constitute the entire agreement relating to settlement of this **Action** and the causes of action and defenses asserted therein, and it shall then be deemed that no oral representations, warranties or inducements have been made to any party concerning this **Stipulation** other than the representations, warranties and covenants expressly stated in this **Stipulation**.

C. Invalidity of Agreement

In the event this **Stipulation** is canceled, rescinded, terminated, voided or nullified, however that may occur, or this **Stipulation** is barred by operation of law, or

invalidated, or ordered not to be carried out by a court of competent jurisdiction, this **Stipulation** shall be null and void for all purposes and neither **Plaintiffs** nor **Defendant** shall be bound by any of its terms. If such an event were to occur, the **Parties** shall revert to the position they were in immediately preceding the execution of this **Stipulation** and shall remain bound by the **Memorandum of Understanding**, which either **Plaintiffs** or **Defendant** may seek to enforce against the other.

D. Amendment or Modification

This **Stipulation** may be amended or modified only by a written instrument signed by counsel for the **Parties** or their successors-in-interest.

E. Successors and Assigns

This **Stipulation** shall be binding upon, and inure to the benefit of, the heirs, beneficiaries, successors or assigns of each of the **Parties**.

F. Governing Law

All terms of this **Stipulation** shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

G. Cooperation and Drafting

The **Parties** have cooperated in the drafting and preparation of this **Stipulation**. This **Stipulation** shall not be construed against any party on the basis that the party was the drafter or participated in the drafting.

Dated:

7-6-16

STEVEN VEGA



Steven Vega

Dated:

7-6-16

JAVIER MORRONE

Javier Morrone

Dated:

LANGHAM HOTELS PACIFIC CORPORATION

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Dated:

7-6-16

HAYES PAWLENKO LLP

Kye D. Pawlenko

Attorneys for Plaintiffs Steven Vega and Javier Morrone

Dated:

BAKER & HOSTETLER LLP

Sabrina L. Shadi

Attorneys for Defendant Langham Hotels Pacific Corporation