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Superior Court of California  
County of Los Angeles

OCT 14 2020

Sherri R. Carter, CLERK OF COURT  
By *[Signature]*, Deputy  
Sherri R. Carter

6 Attorneys for Plaintiff ADRIANA HERNANDEZ,  
7 Individually, and on behalf of all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 ADRIANA HERNANDEZ, individually, and  
11 on behalf of all others similarly situated,

Lead Case No. 19STCV16831  
(Related to Case No. 19STCV15211)

12 Plaintiffs,

*Assigned for All Purposes to the Hon. Ann I.  
Jones in Department 11*

13 v.

CLASS ACTION

14  
15 2523 E. ANAHEIM, INC. dba XS  
16 AFTERHOURS GENTLEMENS CLUB, a  
California corporation; and DOES 1 through  
17 100, inclusive,

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS AND PAGA  
ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

18 Defendants.

[DECLARATION OF PROPOSED CLASS  
COUNSEL PETER E. GARRELL; DECLARATION  
OF PROPOSED CLASS COUNSEL JOHN M.  
KENNEDY; DECLARATION OF PROPOSED  
CLASS REPRESENTATIVE ADRIANA  
HERNANDEZ; AND [PROPOSED] ORDER FILED  
CONCURRENTLY HERewith]

DATE: TBD  
TIME: TBD  
PLACE: Department 11

Action Filed: May 15, 2019

BY FAX

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1 **TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that in Department 11 of the above-entitled Court, located at  
3 312 N. Spring St., Los Angeles, CA 90012, Plaintiff Adriana Hernandez (“Plaintiff”) and those  
4 similarly situated will bring an unopposed Motion to seek an order of this Court: (1) granting  
5 preliminary approval of the proposed settlement of **two** actions: the lead action, Case No.  
6 19STCV16831 and the related action, Case No. 19STCV15211 (the “Actions”); (2) ordering  
7 conditional certification of the class for settlement purposes only in both actions; (3) approving  
8 the Notice of Class Action Settlement to be mailed to Settlement Class Members in both  
9 actions; and (4) scheduling a Settlement Hearing (Final Fairness Hearing) in both actions.  
10 Within one court day of the above-referenced Court setting a date for the motion for preliminary  
11 approval hearing, Plaintiff will serve an amended notice of this Motion to set forth that date for  
12 all Parties.

13 Plaintiff Adriana Hernandez is the Named Plaintiff in both actions. Defendant 2523 E.  
14 Anaheim, Inc., a California Corporation and GC Brothers Entertainment, LLC are the named  
15 and proper Defendants in the Actions. Defendants are the entities which own and do business  
16 as the two gentlemen’s clubs in the two related actions. Defendant 2523 E. Anaheim, Inc. does  
17 business as XS Afterhours Gentlemen’s Club (“XS”). GC Brothers Entertainment, LLC does  
18 business as The Palms Gentlemen’s Club (the “Palms” and collectively with XS, the “Clubs”).<sup>1</sup>  
19 Many of the putative class members performed at both Clubs. To make matters  
20 administratively more convenient, the class notice and claim form will permit the class  
21 members to make one claim related to their performances at both Clubs.

22 This motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor  
23 Code section 2699, subdivision (1)(2). This Motion is made on the grounds that the parties have  
24 reached a proposed class settlement (following a private mediation before Judge Richard Stone,  
25 retired, at Signature Resolution) in the two actions, which the parties submit is fair, reasonable,  
26 adequate, and in the best interests of the Class Members and parties.

27 \_\_\_\_\_  
28 <sup>1</sup> At the March 4, 2020 status conference, the court ordered *Hernandez v. 2523 E. Anaheim, Inc. dba XS Afterhours Gentlemen’s Club*, Case No 19STCV16831 to be the lead case.

1 This Motion is based on this Notice, the Memorandum of Points and Authorities, the  
2 Class Action Settlement Agreement, General Release and Exhibits thereto, the Declarations of  
3 John M. Kennedy, Peter E. Garrell and Plaintiff Adriana Hernandez, as well as all other papers  
4 filed in this matter, and oral argument or other evidence that the Court may consider at such  
5 hearing.

6  
7 Dated: October 13, 2020

FORTIS LLP

8  
9 By: /s/ Peter E. Garrell  
10 Peter E. Garrell  
11 John M. Kennedy  
12 Attorneys for Plaintiff  
13 ADRIANA HERNANDEZ, individually, and  
14 on behalf of all others similarly situated  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 This motion seeks provisional certification of a settlement class (the “Class” or  
4 “Settlement Class”) defined as all individuals who performed as exotic performers and provided  
5 nude, semi-nude and/or bikini entertainment for Defendant 2523 E. Anaheim Inc. dba XS or  
6 Defendant GC Brothers Entertainment, LLC dba The Palms (“Defendants” or “Club Owners”)  
7 from May 2, 2015 through the date of entry of a Preliminary Approval Order.<sup>2</sup> (Defendants and  
8 Plaintiff Adriana Hernandez (“Plaintiff”) are referred to as the “Parties.”)

9 This motion also seeks preliminary approval of the Settlement Agreement (“Settlement”).  
10 The parties reached the Settlement after thorough investigation and discovery through arms-  
11 length bargaining including an in-person mediation before the Honorable Richard Stone (Ret.) at  
12 Signature Resolution, followed by numerous email and telephonic counsel meetings, continued  
13 discussions with the mediator, the service of written discovery, and after assessing the risks and  
14 benefits of proceeding with additional litigation of this action. The Settlement also provides  
15 injunctive relief in the form of conversion to employee status to all putative Class Members who  
16 worked for Defendants, as well as financial benefits based upon the number of shifts worked.

17 The main elements of the Settlement are as follows:<sup>3</sup>

- 18 1. Defendants will pay \$375,000 as the “Gross Settlement Amount.” There is **no**  
19 **reversion**. Approximately \$186,012.50 shall be paid to Class Members on a *pro rata* basis.
- 20 2. **All performers who work for Defendants will be converted from independent**  
21 **contractors to W-2 employees no later than 30 days after the date of final approval.** This is  
22 significant consideration for the Settlement.
- 23 3. Class Counsel will seek approval for Plaintiff to be paid an incentive  
24 enhancement not to exceed \$7,500.
- 25 4. Class Counsel shall seek attorneys’ fees not to exceed \$124,987.50.
- 26

27 <sup>2</sup> *The Palms* Case was filed on May 2, 2019.

28 <sup>3</sup> See Declaration of Peter Garrell (“Garrell Decl.”), Ex. A is the Class and PAGA Action Stipulation and Settlement Agreement.



1           5.       Class Counsel will seeks costs not to exceed \$10,000.

2           6.       Class Counsel will seek Settlement administration costs not to exceed \$31,500.

3           7.       Pursuant to the Private Attorneys General Act (“PAGA”), Class Counsel shall  
4 seek a payment in the amount of \$15,000 for alleged PAGA Labor Code violations to be paid by  
5 Defendants, seventy-five percent (75%) of which (i.e., \$11,250) shall be paid to the California  
6 Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which  
7 (i.e., \$3,750) will be distributed to Aggrieved Employees as part of the Net Settlement Amount  
8 as defined in the Settlement. Pursuant to Labor Code section 2699, subdivision (1)(2), the  
9 proposed Settlement is being submitted to the LWDA at the same time this motion is filed.

10           The Parties submit the Settlement satisfies the requirements of Code of Civil Procedure  
11 section 382 and is fair and reasonable and confers a substantial benefit upon Class Members.  
12 Pursuant to California Rules of Court, Rule 3.769 and Labor Code section 2699, subdivision  
13 (1)(2), Plaintiff requests the Court grant preliminary approval of the Settlement, certify the Class  
14 for settlement purposes, approve the proposed Class Notice allowing for opt-outs and/or  
15 objections, and schedule a final approval hearing.

16 **II.     STATEMENT OF THE CASE**

17           **A.     Background Facts**

18           The Palms was founded in 2001 and is located in Signal Hill; XS was founded in about  
19 2010, and is located in Wilmington. Plaintiff recognizes these lawsuits could be devastating to  
20 the Clubs in the pandemic Covid-19 world and that the Clubs may not open for months, if at all.  
21 Class counsel’s investigation has shown that until recently, the performers were treated as  
22 independent contractors in a legal world dependent upon the multi-factor control test of *S.G.*  
23 *Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).  
24 Class counsel has concluded in their investigation that Defendants sought to comply with the  
25 Labor Code under *Borello* and allow the entertainers tremendous freedom, chosing when to work  
26 and to come and go as they pleased. Thus, litigating whether Defendants intended to willfully  
27 violate the Labor Code is a significant risk factor that bears on the damages caculations.  
28

1           **B.       Summary of Settlement Considerations**

2           The ever-evolving status of independent contractors in California resulted in a  
3 tremendous amount of litigation. *Dynamex Operations W v. Superior Court*, 4 Cal.5th 903, 935,  
4 416 P.3d 1, 20 (2018), *reh'g denied* (June 20, 2018), as codified in AB-5, now provides  
5 definitive guidance on the issue. Thus, injunctive relief is important. Small businesses that may  
6 not have been in compliance must now insure proper treatment of employees going forward.

7           Another important consideration is to ensure that XS and the Palms are able to reopen  
8 after the COVID-19 government ordered shut down ceases. The Clubs have been closed since  
9 March 2020. Any further litigation or any increased payment towards the Settlement will likely  
10 result in Defendants filing for bankruptcy, which would risk the closure of the Clubs and the loss  
11 of a multitude of jobs by all putative Class Members as well as bar staff, management, security  
12 and similar positions. By contrast, if the Settlement is approved, it is anticipated that Defendants  
13 will be able to continue to operate and all putative Class Members will be converted to W-2  
14 employees and, moving forward, will receive wages and other benefits conferred by the  
15 California Labor Code.

16           Class action litigation can be expensive and time consuming. Here, there are issues  
17 related to whether or not arbitration agreements are enforceable and whether or not Plaintiff can  
18 establish class liability. These issues are expensive to try and may result in harm to the Class by  
19 depleting funds available for class relief.

20           **C.       Plaintiff’s Allegations and Procedural History**

21           **1.       Plaintiff’s Complaints and First Amended Complaints**

22           On May 2, 2019 and May 15, 2019 respectively, Adriana Hernandez filed class action  
23 complaints against the Clubs. (Garrell Decl., ¶ 4.) After PAGA Notice, on August 8, 2019,  
24 Plaintiff filed First Amended Complaints (“FAC”) against Defendants’ Clubs adding a PAGA  
25 claim. She alleged: (1) Failure to Provide Meal Breaks in Violation of Labor Code § 226.7; (2)  
26 Failure to Provide Rest Breaks in Violation of Labor Code § 512; (3) Failure to Pay Wages in  
27 Violation of Labor Code §§ 510 and 1194; (4) Failure to Pay All Wages Upon Separation of  
28 Employment in Violation of Labor Code § 203; (5) Failure to Provide Complete and Accurate

1 Wage Statements in Violation of Labor Code § 226; (6) Failure to Provide Reimbursement of  
2 Expenses in Violation of Labor Code § 2802; (7) Failure to Keep Accurate Payroll Records in  
3 Violation of Labor Code § 1198.5 *et seq.*; (8) Violation of Business and Professions Code §  
4 17200, *et seq.*; (9) Failure to Maintain Workers Compensation Insurance Coverage in Violation  
5 of Labor Code § 3700 *et seq.*; and (10) Violation of Labor Code § 2698, *et seq.* (Garrell Decl., ¶  
6 5, Ex. B.) The FACs were served on the LWDA pursuant to Labor Code section 2699,  
7 subdivision (1)(1). (Garrell Decl., ¶ 5, Ex. C.) Defendants answered both FACs. (Garrell Decl.,  
8 ¶ 7.)

9 **D. Negotiations and Analysis Regarding Total Exposure and Risk**

10 Early in the case, the Parties engaged in arms-length settlement negotiations followed by  
11 an in-person mediation on February 3, 2020, at Signature Resolution before the Honorable  
12 Richard Stone, retired. These negotiations then included numerous emails, telephone calls and  
13 the exchange of club and entertainer information. (Garrell Decl., ¶ 6.)

14 Through the foregoing processes, Class Counsel analyzed the following among other  
15 issues: (a) inspection and analysis of Class data, including size of the class and shifts worked;  
16 (b) inspection and analysis of Defendants' policies and procedures; (c) analysis of potential  
17 class-wide damages; (d) analysis of the legal positions taken by Defendants (including arbitration  
18 agreements with class waivers at the Palms); and (e) research of the applicable law with respect  
19 to the claims asserted in the FACs and the potential defenses thereto. (Garrell Decl., ¶ 8.) The  
20 Parties have engaged in sufficient investigation to assess the relative merits of the claims of  
21 Plaintiff, the Class, and Defendants' affirmative defenses. (Garrell Decl., ¶ 9.) As a result of  
22 these negotiations and the ongoing work of the mediator, the Parties entered into a long-form  
23 Class and PAGA Action Stipulation and Settlement Agreement after assessing total exposure,  
24 risks of success and potential insolvency of Defendants. (Garrell Decl., ¶ 7.)

25 Specifically, although in part disputed by Defendants, Class Counsel learned the  
26 following:

- 27 • Performers at the Clubs have at all times decided when and for how long they will  
28 perform.

- 1           • In 2019, XS employed:
- 2               - 169 Entertainers
- 3               - 71 of the 169 Entertainers worked less than 20 hours per year
- 4               - The total entertainer hours for 2019 were 11,079
- 5               - The total entertainer shifts for 2019 were approximately 2,462 (based on 4.5 hours
- 6               per shift)
- 7               - XS records from 2015-2018 are not as detailed as 2019 but present a similar pattern
- 8               with many entertainers overlapping year to year
- 9           • In 2019, The Palms employed:
- 10               - 268 Entertainers
- 11               - 127 of the 268 Entertainers worked less than 20 hours per year
- 12               - The total entertainer hours for 2019 were 19,744
- 13               - The total entertainer shifts for 2019 were approximately 4,387 (based on 4.5 hours
- 14               per shift)
- 15               - The Palms records from 2015-2018 are not as detailed as 2019 but present a similar
- 16               pattern with many entertainers overlapping year to year.
- 17           • There are approximately 900 putative Class Members.
- 18           • During the Class Period, the number of shifts varied greatly per entertainer,
- 19               depending on how active the putative class member was.
- 20           • During the Class Period, the average length of a shift was four and a half to five hours
- 21               or less.
- 22           • Putative Class Members did not receive any wages from Defendants. Income was
- 23               paid by patrons who provided tips.
- 24           • Plaintiff contends that performers were required to “tip out” to certain of Defendants’
- 25               employees, including bar staff and security, and that a performer would ordinarily tip
- 26               out 20% of her performer fees and tips. Defendants dispute this and contend
- 27               performers were never asked or required to “tip out.”
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- During the class period, putative class members worked approximately 123,292 hours (27,396 shifts based on 4.5 hours per shift) for which they were not compensated by Defendants.
  - In the event there is a 25-50% redemption rate at the close of the class period (which is an optimistic projection) the per-shift payment based on a net settlement of \$186,012.50 is estimated at \$13.58 (at 50%) or up to \$27.16 (at 25%) both of which are at the high end for what is customary in similar entertainer class settlements.
  - The lease at the Palms is set to expire in March 2021 and, at this point, that lease has not been renegotiated or extended.

11 (Garrell Decl., ¶ 10.)

12 In particular, during the Class Period, putative Class Members worked approximately  
13 27,396 shifts, during which Plaintiff contends they did not receive any formal meal or rest breaks.  
14 However, Defendants demonstrated that labor law signs were posted in dressing rooms that  
15 stated break and lunch policies, and Defendants contend performers were not restricted when  
16 they could take breaks and lunches.

17 Plaintiff pled ten causes of action. Each is addressed in detail in a risk factor analysis in  
18 the Garrell Decl. at ¶¶31-54 in order to show total potential exposure if Plaintiff took the case to  
19 trial and prevailed on all issues – including defeating any motions to compel arbitration.

20 **III. THE SETTLEMENT**

21 **A. General Description of the Settlement**

22 The Settlement is in the ballpark of reasonableness given total potential exposure  
23 assessed against cost and risk of going to trial. For this reason, Class Counsel submits the  
24 Settlement reflects a fair and equitable compromise. (Garrell Decl., ¶¶ 11-30.)

25 Plaintiff and Class Counsel believe the claims have merit. Plaintiff and Class Counsel  
26 acknowledge the expense and delay of lengthy proceedings necessary to prosecute the action  
27 through trial and appeals, especially if such litigation were to lead to Defendants' bankruptcy, or  
28 if the Clubs remain unable to open and/or if the Palms does not renew its lease. Thus, Class

1 Counsel have considered the risks inherent in any litigation, and the specific risks of continued  
2 litigation in these actions.

3 Moreover, Class Counsel are mindful of the inherent problems of proof under, and  
4 possible defenses to, the claims alleged. In light of the preceding potential risks, Class Counsel  
5 believe that the Settlement set forth in the Class and PAGA Action Stipulation and Settlement  
6 Agreement (Garrell Decl., Ex. A) confers substantial benefits upon Plaintiff and each of the  
7 members of the Class, and that an independent review of this Settlement by the Court will  
8 confirm this conclusion. The Settlement Agreement, filed with this Motion as Exhibit A to the  
9 Garrell Declaration, generally provides for the following:

10 **1. Settlement Class**

11 For the purposes of settlement only, the “Class” or “Class Members” includes all  
12 individuals who have performed as exotic performers at the Clubs during the “Class Period.”  
13 The “Class Period” is defined as “the period of time from May 2, 2015 through the Preliminary  
14 Approval Order date.” The PAGA class includes all Aggrieved Employees who have performed  
15 as exotic performers at the Clubs during the “PAGA Period.” The “PAGA Period” is defined as  
16 the period beginning on May 2, 2018 and extending through the Preliminary Approval Order  
17 date.” There are approximately 900 individuals in the Settlement Class.

18 **2. Settlement Amounts**

19 Defendants will pay a non-reversionary amount of \$375,000 (“Gross Settlement  
20 Amount”). From this amount will be deducted attorneys’ fees and costs, the Class  
21 Representative enhancement award, the LWDA/PAGA payment, and settlement administration  
22 costs. The remaining amount of approximately \$186,012.50 (the “Net Settlement Amount”) will  
23 be allocated to Settlement Class Members on a pro rata based upon number of shifts worked.

24 Class Counsel will seek approval for Plaintiff to be paid a reasonable enhancement award  
25 not to exceed \$7,500. Class Counsel shall seek approval for an attorneys’ fees award not to  
26 exceed \$124,987.50. Class Counsel shall seek approval from the Court for costs incurred and to  
27 be incurred but not to exceed \$10,000. Class Counsel shall seek costs of administration not to  
28 exceed \$31,500.

1 Pursuant to the PAGA of 2004, Defendants shall pay the amount of \$15,000 for alleged  
2 Labor Code violations. Seventy-five percent (\$11,250) shall be paid to the LWDA and twenty-  
3 five percent (\$3,750) will be distributed to Aggrieved Employees on a *pro rata* basis. The  
4 Settlement Administrator will report payments on IRS Form 1099 as appropriate.

### 5 **3. Calculation of the Individual Settlement Amounts**

6 After deducting the approved fees and cost amounts specified above, each Participating  
7 Class Member will be entitled to a *pro rata* portion of the remaining amount, which is the Net  
8 Settlement Amount. Class Settlement Payments will be awarded from the Net Settlement  
9 Amount based on the respective number of “shifts” worked by each Participating Class Member  
10 during the Class Period. Each Participating Class Member’s share of the Net Settlement Amount  
11 will be calculated based upon the total number of shifts worked by all Participating Class  
12 Members during the Class Period. The Class Notice will include the number of shifts that  
13 Defendants believe each Class Member worked during the Class Period and the amount the Class  
14 Member is estimated to receive under the terms of the Settlement.

#### 15 Example:

16 Participating Class Member A worked 25 shifts during the Class Period. All  
17 Participating Class Members worked a combined total of 100,000 shifts during the Class Period.  
18 Participating Class Member A’s Class Settlement Payment would be calculated as follows:

- 19 ➤ 25 shifts for Participating Class Member A ÷ 100,000 total shifts for all Participating  
20 Class Members = 0.025%.
- 21 ➤ Participating Class Member A is entitled to a Class Settlement Payment in an amount that  
22 is 0.025% of the Net Settlement Amount.<sup>4</sup>

23 Class Settlement Payments shall be distributed only to Participating Class Members.  
24 PAGA Settlement Payments will be distributed to all Aggrieved Employees. The Class  
25 Settlement Payments allocated to Class Members who opt out of the Settlement will be  
26 distributed to Participating Class Members on a *pro rata* basis based on the same formula.

27 \_\_\_\_\_  
28 <sup>4</sup> The Class Settlement Payment will be rounded to the nearest penny with .5 rounded up.

1                   **4. Injunctive Relief**

2           All performers who continue to work for Defendants will be converted to W-2 employees  
3 no later than thirty (30) days after final approval. For three (3) years after the Effective Date,  
4 Defendants will provide Class Counsel with confirmation, on an annual basis, that all performers  
5 are being treated as employees. This injunctive relief confers a substantial benefit on the  
6 performers.

7                   **5. Objections**

8           The Class Notice provides that any member of the Settlement Class who objects to the  
9 Settlement must file a written objection with the the Settlement Administrator. Such written  
10 objection must be filed and postmarked within sixty (60) calendar days following the date of the  
11 Class Notice. Members of the Settlement Class who fail to file and serve timely written  
12 objections in the manner specified above shall be deemed to have waived any objections and  
13 shall be foreclosed from making any objection (whether by appeal or otherwise) to the  
14 Settlement.

15                   **6. The Settlement Administrator**

16           Kurtzman Carson Consultants, LLC (“KCC”) has been selected by the Parties to serve as  
17 Administrator to coordinate notice and issue and mail class checks. KCC shall be retained at a  
18 cost not to exceed \$31,500. The Settlement Administrator shall also do the following:

19           (1) Report payments on IRS Form 1099’s as appropriate;

20           (2) Resolve issues related to uncashed checks and pay the funds represented by such  
21 un-redeemed checks to the following 501(c)(3): The League of Women Voters, a nonprofit,  
22 nonpartisan organization which is celebrating its 100<sup>th</sup> anniversary this year. It has evolved from  
23 seeking to help 20 million recently enfranchised women to vote in 1920 to promoting informed  
24 citizen participation at all levels of government today.

25           (3) Within ten (10) calendar days after receipt of the list of members of the  
26 Settlement Class from Defendants, KCC shall send the Court-approved Notice of Class Action  
27 Settlement to each member of the Class by first class mail. Before notice is mailed, the  
28 Settlement Administrator will conduct a search of all addresses of members of the Class using



1 the National Change of Address database to obtain current addresses. For members of the  
2 Settlement Class whose notice is returned as undelivered, the Settlement Administrator shall use  
3 standard skip-tracing methods to obtain forwarding addresses;

4 (4) Send to members of the Settlement Class by first class mail the settlement  
5 documents and information, including information concerning the final judgment in satisfaction  
6 with California Rules of Court, Rule 3.771(b).

7 (5) Shall receive and process Request for Exclusion forms (opt-out forms) from  
8 members of the Settlement Class;

9 (6) Shall receive and process objections from members of the Settlement Class;

10 (7) Shall handle inquiries from Settlement Class Members concerning the Class  
11 Notice and determination of the individual settlement amounts, or any other issue; and

12 (8) Shall distribute payments to Settlement Class Members.

13 **7. The Scope of the Release**

14 Any Settlement Class Member who does not opt-out of the Settlement will release any  
15 and all wage-and-hour claims, rights, demands, liabilities, and causes of action of every nature  
16 and description within the scope of or arising from the allegations and/or causes of action  
17 asserted by Plaintiff and/or otherwise set forth in the First Amended Complaints that accrued,  
18 had accrued, or could have accrued at any time on or prior to the date of entry of Final Approval  
19 of this Settlement Agreement. Any Class Member who makes a claim will release the foregoing  
20 as well as her Fair Labor Standards Act (“FLSA”) Claims. (See Garrell Decl., Ex. A, Settlement  
21 at ¶¶ 38-40.)

22 In addition to the releases made by Class members, Plaintiff Adriana Hernandez shall  
23 also release all other claims, known or unknown, in exchange and consideration for the  
24 enhancement payment set forth above. Plaintiff shall agree to a general release of Defendants  
25 from all claims, demands, rights, liabilities, grievances, and causes of action of every nature and  
26 description whatsoever, known or unknown, pending or threatened, asserted or that might have  
27 been asserted, whether brought in tort or in contract, whether under state, federal or local law.

1 This general release shall include all employment-related and non-employment-related claims,  
2 whether known or unknown, arising during the Class Period.

3 **IV. PRELIMINARY APPROVAL SHOULD BE GRANTED**

4 A class action may not be settled without the approval of the Court. (Civ. Code  
5 § 1781(f).) Under Federal Rule of Civil Procedure 23(e)—upon which California Civil Code  
6 section 1781 is modeled<sup>5</sup>—there is a defined procedure and specific criteria for settlement  
7 approval in class action settlements, as described in Manual for Complex Litigation, Fourth (Fed.  
8 Judicial Center) (“Manual”) §§ 21.61, 21.63. The Manual’s settlement approval procedure  
9 describes three distinct steps:

- 10 1. Preliminary approval of the proposed settlement at a hearing;
- 11 2. Dissemination of mailed and/or published notice of the Settlement to all  
12 affected class members; and
- 13 3. A “formal fairness hearing,” or final settlement approval hearing, at which  
14 class members may be heard regarding the Settlement, and at which  
evidence and argument concerning the fairness, adequacy, and  
reasonableness of the Settlement is presented.

15 This procedure, commonly used by California courts, and endorsed by the leading treatise  
16 on class actions, safeguards class members’ procedural due process rights and enables the Court  
17 to fulfill its role as the guardian of class interests. (4 Newberg on Class Actions (4th ed. 2002)  
18 § 11.22 et seq.)

19 At the preliminary approval stage, the Court has broad powers to determine whether the  
20 proposed settlement is fair under the circumstances of the case. (*See Wershba v. Apple*  
21 *Computers, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) Preliminary approval is warranted if the  
22 Settlement falls within the “range of reasonableness.” (*North County Contractors Assn. Inc. v.*  
23 *Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-1090.)

24 For preliminary approval, the Court makes an “initial evaluation” of the fairness of the  
25 proposed settlement on the basis of written submissions and informal presentation from the  
26 settling parties. The Manual summarizes the preliminary approval criteria as follows:

27 \_\_\_\_\_  
28 <sup>5</sup> The California Supreme Court urged state trial courts to use Rule 23 and federal case law for  
guidance in deciding class issues. (*See Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 821.)

1 The judge should make a preliminary determination that the  
2 proposed class satisfies the criteria set out in Rule 23(a) and at  
3 least one of the subsections of Rule 23(b). [...] The judge must  
4 make a preliminary determination on the fairness, reasonableness,  
and adequacy of the settlement terms and must direct preparation  
of the notice of the certification, proposed settlement, and the date  
of the final fairness hearing.

5 (Manual § 21.632; see also 4 Newberg on Class Actions (4th Ed. 2002) § 11.25.)

6 The California standard for approval of class settlement is similar to the federal standard:  
7 the settlement should be fair, reasonable, and adequate for class members. (*Dunk v. Ford Motor*  
8 *Co.* (1996) 48 Cal.App.4th 1794, 1801.) In making the fairness determination, the Court should  
9 consider “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of  
10 further litigation, the risk of maintaining class action status through trial, the amount offered in  
11 settlement, the extent of discovery completed and the stage of the proceedings, [and] the  
12 experience and views of counsel....” (*Id.* at p. 1801.) A presumption of fairness exists where:  
13 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are  
14 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
15 litigation; and (4) the percentage of objectors is small. (*Id.* at p. 1802.)

16 **A. The Settlement is Within the Range of Reasonableness**

17 The Settlement is within the range of reasonableness. Given that class certification was  
18 not a certainty and there are issues related to arbitration, Covid-19, lease renewal, and general  
19 financial soveny, the Settlement here is fair and reasonable. The Settlement will substantially  
20 benefit Settlement Class Members with injunctive relief and financial compensation.

21 **B. The Settlement Resulted From Non-Collusive Arms-Length Negotiations**

22 California courts recognize that “a presumption of fairness exists where ... [a] settlement  
23 is reached through arm’s-length bargaining.” (*Wershba, supra*, 91 Cal.App.4th at 245.) In this  
24 case, the Settlement Agreement was reached after a private mediation with Judge Stone and then  
25 exchanged additional information relative to liability and damages; including the written lease  
26 for the Palms. This information informed Class Counsel’s assessment of the strengths and  
27 weaknesses of the case and the benefits of the Settlement, especially in light of Defendant’s  
28 financial conditions and potential for non-lease renewal at The Palms.

1           **C.     The Settlement is Reasonable in Light of Significant Litigation Risks**

2           The reasonableness of the Settlement is underscored by the fact Defendants have  
3 potentially significant legal and factual grounds available to defend this action. Defendants deny  
4 all of Plaintiff’s claims and allegations of non-compliance, denies any and all liability to Plaintiff  
5 or any putative member of the alleged or proposed classes, denies wrongdoing of any and every  
6 kind, contends that it complied at all times with the California Labor Code, and contends that the  
7 claims are neither meritorious nor appropriate for class treatment other than for purposes of  
8 settlement.

9           Plaintiff and Class Counsel, on the other hand, believe that the claims, allegations and  
10 contentions asserted in the action have merit. However, Plaintiff and Class Counsel recognize  
11 and acknowledge the expense and delay of the lengthy proceedings necessary to prosecute the  
12 Actions against Defendants through trial and appeals. Furthermore, Class Counsel have  
13 considered the risks inherent in any litigation, and the additional risk of continued litigation,  
14 given Defendants’ financial health.

15           Class Counsel have considered the potential difficulty in maintaining the case as a class  
16 action given the arguably different circumstances of each Class Member’s claims. Class Counsel  
17 are also mindful of the inherent problems of proof under, and possible defenses to, the claims  
18 alleged. In light of these risks (as further examined in the Garrell Declaration), Class Counsel  
19 submit the Settlement confers fair and reasonable benefits upon Plaintiff and the Class members.

20           **D.     Plaintiff’s Enhancement Compensation is Reasonable**

21           The proposed Enhancement Compensation of \$7,500 to Plaintiff is intended to recognize  
22 her substantial initiative, risk, and effort on behalf of the Class. Courts routinely approve  
23 incentive awards to compensate plaintiffs for services they provide and risks they incur during  
24 class action litigation. (*See Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726  
25 (upholding “service payments” to named plaintiffs for their efforts in bringing the case).)

26           Here, Plaintiff participated in this action on behalf of all Class Members when she very  
27 well could have done so on her own behalf only. Additionally, Plaintiff assisted Class Counsel  
28 at every stage, from reviewing the pleadings, providing input through repeated questions from

1 Class Counsel about experiences at the Clubs, attending the mediation to discuss those  
2 conditions with Judge Stone, and remaining in close contact with Class Counsel. (Garrell Decl.,  
3 ¶ 10.) (Declaration of Adriana Hernandez, ¶ 3.)

4 Notably, because Plaintiff will receive an additional payment, she is agreeing to a broader  
5 and more comprehensive release of all claims, known and unknown, unlike the rest of the Class  
6 Members. (*See* Garrell Decl., Ex. A, Settlement at ¶ 10.3.) Accordingly, a \$7,500 payment  
7 fairly compensates Plaintiff for the full release and the assistance provided to Class Counsel.

8 **E. Attorneys' Fees and Costs are Reasonable**

9 Class Counsel have litigated this case for over a year and were actively preparing it for  
10 class certification with written discovery, briefing and preparation for a hearing. The ongoing  
11 work has been extensive and ultimately successful in achieving resolution. Class Counsel  
12 conducted formal and informal investigations into the facts of the case, prepared significant  
13 mediation briefs for Judge Stone, obtained underlying records for Class Members and the Clubs;  
14 and meet and conferred with defense counsel about all case issues, including potential insolvency  
15 and the lease renewal situation. Class Counsel will provide evidence as to time worked,  
16 litigation efforts, and further argument at the time of filing their memorandum in connection with  
17 the final fairness hearing in support of their request for attorneys' fees and costs. Class Counsel  
18 will provide the number of hours dedicated to this litigation in support of the motion for approval  
19 of attorneys' fees and costs.

20 The proposed Settlement establishes a monetary settlement amount of \$375,000 – in the  
21 pandemic world in which the clubs are closed, generating no operating income, and it is  
22 uncertain if the clubs will reopen and if so, when and for how long as to the Palms (given its  
23 lease renewal situation). The proposed Settlement provides for Class Counsel to apply to the  
24 Court for an award of attorneys' fees in an amount up to thirty-three and one-third percent  
25 (33.33%) of the Settlement (\$124,987.50) and litigation costs not to exceed \$10,000.

26 This attorneys' fee award is commensurate with (1) the risk that Class Counsel took in  
27 bringing and litigating these cases, (2) the time, effort, and expense dedicated thereto, (3) the  
28 skill and determination they have shown, (4) the fair and reasonable value of the Settlement

1 achieved for Class Members, and (5) the other cases they turned down in order to devote their  
2 time and efforts to this matter. The proposed Class Notice provides the Class Members with  
3 information as to the amount of attorneys' fees and costs that will be sought.

4 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their  
5 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v.*  
6 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, an "experienced trial judge is the  
7 best judge of the value of professional services rendered in his court[.]" (*Ketchum v. Moses*  
8 (2001) 24 Cal.4th 1122, 1132.) California law provides attorney fee awards should be equivalent  
9 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred.  
10 (*Lealao, supra*, 82 Cal.App.4th at 47.) In *Lealao*, the court held that when an action leads to a  
11 recovery that can be "monetized" with a reasonable degree of certainty, the trial court should  
12 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace  
13 in comparable litigation." (*Id.* at 50.) In cases where class members present claims against a  
14 maximum settlement amount and the settlement agreement provides the defendant agrees to pay  
15 attorneys a percentage of the same, use of the percentage method is appropriate. (*Id.* at 32.)

16 Class Counsel's application for attorneys' fees in light of the facts and circumstances  
17 surrounding the case is within the range of reasonableness. Courts have awarded fees as high as  
18 fifty percent (50%) depending on the case. (*Newberg* § 14.03; *see also In re Ampicillin Antitrust*  
19 *Litigation* (D. D.C. 1981) 526 F.Supp. 494 [awarding attorneys' fees in the amount of 45% of the  
20 \$7.3 million settlement amount]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*  
21 (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately 53% of the settlement amount as  
22 attorney fees].) California courts routinely approve attorneys' fees in the amount of thirty to  
23 forty percent of the settlement amount in wage-and-hour cases. (*Vasquez v. Coast Valley*  
24 *Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491-92; *Singer v. Becton Dickinson and Co.*  
25 (S.D. Cal. 2010) 2010 U.S. Dist. LEXIS 53416; *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles  
26 County Superior Court, Case No. BC262247 (May 2005) (Hon. Anthony J. Mohr); *Moore v.*  
27 *IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (Hon. Peter Lichtman).)

1 Here, Class Counsel have borne all the risks and costs of litigation and will not receive  
2 any compensation until recovery is obtained and even after the case is concluded will have further  
3 work to do in monitoring the conversion of performers to employees. Class Counsel are well  
4 experienced in wage-and-hour class action litigation and have used that experience to obtain a  
5 fair and reasonable settlement. Considering the amount of the fees requested, the work  
6 performed, and the risks incurred, the requested fees and costs are reasonable and should be  
7 awarded.

8 **F. The Proposed Notice is Reasonable**

9 In order to protect the rights of absent Class Members, the Court must provide the best  
10 notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)  
11 472 U.S. 797, 811-12.) The primary purpose of procedural due process is to provide affected  
12 parties with the right to be heard in a meaningful manner. It does not guarantee any particular  
13 procedure, but requires notice reasonably calculated to apprise interested parties of the action  
14 affecting their interests and an opportunity to present their objections. (*Ryan v. California*  
15 *Interscholastic Federation – San Diego Section* (2001) 94 Cal.App.4th 1048, 1072.)

16 In these cases, each Class Member shall be mailed a single Notice of Class Action  
17 Settlement, a copy of which is attached as Exhibit “A” to the Settlement. The proposed Notice  
18 informs Class Members about the terms of the Settlement; the right to opt-out; the right to object;  
19 how claim amounts are calculated; how to receive a settlement share; the attorneys’ fees and  
20 costs requested; the administration costs requested; the Class Representative Enhancement  
21 requested; as well as the date, time, and location of the final approval hearing. The Notice is  
22 calculated to ensure that Class Members are alerted to the terms of the Settlement.

23 The Settlement Administrator will provide notice to the Class by first class mail.<sup>6</sup>  
24 Defendants will provide the last-known addresses for each Settlement Class Member to the  
25 Administrator. Prior to mailing the Notice (and other documents in the notice packet, which

26 \_\_\_\_\_  
27 <sup>6</sup> “For adjudication of class claims for money damages or similar relief at law, notice sent by first  
28 class mail to the last known address of each member of the plaintiff class is sufficient.”  
(Rylaarsdam et al., Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2012)  
¶ 14:119, citing *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812.)

1 includes the Claim Form), the Administrator will conduct a search of all addresses of members  
2 of the Class using the National Change of Address database to obtain current addresses. If a  
3 notice packet returns as undeliverable, there will be an additional attempt to secure a correct  
4 address using “skip tracing.” For these reasons, the proposed Notice is reasonable and the Court  
5 should approve it. Notice shall also be placed in the dressing rooms if the Clubs reopen.

6 **G. Costs, Risks, and Delay of Trial and Appeal**

7 “A[] central concern [when evaluating a proposed class action settlement] . . . relate[s] to  
8 the cost and risk involved in pursuing a litigated outcome. (Fed. R. Civ. P. 23(e), 2018 Advisory  
9 Committee Notes.) In evaluating this factor, the Court “must stop short of the detailed and  
10 thorough investigation that it would undertake if it were actually trying the case[.]” (*Kullar v.*  
11 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) “In the context of a settlement . . .  
12 the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but  
13 rather whether the settlement is reasonable under all of the circumstances.” (*Wershba v. Apple*  
14 *Computer, Inc.*(2001) 91 Cal.App.4th 224, 250.)

15 While Plaintiff believes her case is strong, there would be some need to engage in  
16 substantial individual assessment for certification, liability, and trial as to what each of  
17 Defendants’ Clubs required of performers over the Class Period as to meal and rest break  
18 policies, shift lengths, tipping, and whether Defendants legitimately tried to treat performers as  
19 independent contractors in a pre-*Dynamex* universe; which factual determination would  
20 implicate intent and potential penalties. To prove damages for Defendants’ alleged liability,  
21 Defendants would have required individual fact-intensive inquiries that could have hindered  
22 certification. (*See* Garrell Decl. ¶ 26.)

23 Moreover, it was likely that Defendant GC Brothers Entertainment, LLC dba the Palms  
24 would have filed motions to compel individual arbitrations related to performers at the Palms  
25 based on Arbitration Agreements executed by some of the class members. Moreover, if Plaintiff  
26 prevailed and the matter remained in court, Defendants may have filed for summary judgment or  
27 adjudication of individual or class/collective claims thus increasing the risks and expenses of  
28 litigation. Had Defendant GC prevailed and the arbitration agreements enforced, it is likely that



1 a large number of class members would not pursue arbitration of their individual claims thereby  
2 significantly reducing the number of class members receiving any remedy for their claims.

3 Further, Defendants’ financial condition and apparent inability to satisfy a large judgment  
4 had Plaintiff prevailed on all claims was of concern and is of even greater concern in the midst of  
5 the COVID-19 pandemic as well as the lease issue at The Palms. While the Settlement is  
6 substantial, it reflects a compromise on behalf of the Parties that Plaintiff and Class Counsel  
7 believe is fair and beneficial to Class Members. *See* Garrell Decl. ¶¶ 11-30.

8 **V. THE COURT SHOULD PROVISIONALLY CERTIFY THE CLASS**

9 Provisional class certification is appropriate at the preliminary approval stage where, as  
10 here, the proposed Class, as defined in the Settlement Agreement, has not previously been  
11 certified by the Court and the requirements for certification are met. (*See* 4 Newberg, § 11.22 et  
12 seq.) Code of Civil Procedure section 382 provides in part that “[w]hen the question is one of a  
13 common or general interest of many persons, or when the parties are numerous, and it is  
14 impracticable to bring them all before the court, one or more may sue ... for the benefit of all.”  
15 Section 382 authorizes a class action when a plaintiff meets its burden or establishes the  
16 existence of an ascertainable class and a well-defined community of interest. (*Lockheed Martin*  
17 *Corp. v. Sup. Ct.* (2003) 29 Cal.4th 1096, 1103-04.)

18 The California Supreme Court has held, “The community of interest requirement  
19 embodies three factors: (1) predominant common questions of law or fact; (2) class  
20 representatives with claims or defenses typical of the class; and (3) class representatives who can  
21 adequately represent the class.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)  
22 Furthermore, “[t]he ultimate question in every case of this type is whether ... the issues may be  
23 jointly tried, when compared with those requiring separate adjudication, are so numerous or  
24 substantial that the maintenance of a class action would be advantageous to the judicial process  
25 and to the litigants.” (*Id.* at pp. 1104-05, internal quotations omitted.)

26 Here, Plaintiff submits the Court should certify the Class for settlement purposes for the  
27 following reasons: (1) the Class is ascertainable and numerous; (2) common questions of fact  
28 and law predominate over many individual issues; (3) Plaintiff’s claims are typical of the Class;

1 and (4) Plaintiff adequately represents the Class. Finally, class certification is the superior  
2 method for ensuring a fair and efficient resolution of this controversy with substantial recovery  
3 and real change of employment practices. For settlement only, Defendants do not oppose  
4 Plaintiff's request for provisional certification of a Settlement Class.

5 **A. The Settlement Class is Ascertainable**

6 The Settlement Class is easily ascertainable. Whether a class is ascertainable turns on the  
7 class definition and the means of identifying class members, such as through Defendants'  
8 records. (*Reyes v. San Diego County Bd. of Sups.* (1987) 196 Cal.App.3d 1263, 1274.) Here,  
9 Defendants' records identify Settlement Class Members. (Garrell Decl., ¶ 28.)

10 **B. The Settlement Class is Sufficiently Numerous**

11 The numerosity requirement is met if the class is so large that joinder of all members  
12 would be impracticable. Here, based on records provided by Defendants, there are  
13 approximately 900 members of the Settlement Class. (Garrell Decl., ¶ 29.) For purposes of  
14 settlement only, Defendants do not dispute numerosity.

15 **C. The Proposed Settlement Class Meets the Commonality Requirement**

16 The commonality requirement is met when there are questions of law and fact common to  
17 the class. (*Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 326-27.) Commonality  
18 requires common legal or factual questions predominate; the class members do not need to have  
19 identical claims. (*Id.* at pp. 328, 332-33.) Here, Plaintiff contends, and for purposes of  
20 settlement only, Defendants do not dispute, that there are issues of law and fact common to all  
21 performers. Plaintiff contends all claims are based on common, class-wide policies, and liability  
22 could be determined on a class-wide basis, without individual assessments of liability. (*Brinker*  
23 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033.) As Plaintiff's FAC alleges,  
24 Defendants' alleged liability in these actions (which Defendants dispute) stems from the various  
25 wage-and-hour claims set forth therein that are predicated on Class Members' alleged  
26 misclassification as independent contractors. Defendants have elected not to litigate these issues  
27 in order to achieve settlement.

1           **D.     The Settlement Class Meets the Typicality Requirement**

2           Typicality requires class representatives be members of the class they seek to represent.  
3 (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1997) 191 Cal.App.3d 1341, 1347.) A class  
4 representative’s claim is typical if it arises from the same event, practice or course of conduct  
5 that gives rise to the claims of other class members, and if its claims are based on the same legal  
6 theories. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.) Here, Plaintiff seeks to  
7 represent performers who worked for Defendants at both Clubs (where she worked) and who  
8 suffered from the same legal wrongs that she alleges. Defendants have elected not to litigate this  
9 to achieve settlement.

10           **E.     The Settlement Class Meets the Adequacy Requirement**

11           Adequacy of representation is met where the proposed class representatives have retained  
12 qualified counsel, their interests are aligned with the class, and they can vigorously prosecute  
13 class claims. (*Cal Pack Delivery, Inc. v. United Parcel Serv.* (1997) 52 Cal.App.4th 1, 12.)  
14 Here, Plaintiff contends that she is an adequate class representative because she, like other  
15 performers, had alleged: (1) Misclassification as an independent contractor, (2) Failure to  
16 provide meal periods and rest breaks; (3) Failure to pay overtime and/or minimum wages; (4)  
17 Failure to reimburse business expenses; and (5) Waiting time penalties and record keeping  
18 claims. Plaintiff’s interests are aligned with those of the other performers. Plaintiff has pursued  
19 the interest of the Class vigorously. *See* also Hernandez Declaration ¶¶1-4.

20           Class Counsel are well qualified to represent Plaintiff and the Class Members, as Class  
21 Counsel have expertise in handling large wage and hour class actions and in particular in the  
22 adult arena. (Garrell Decl., ¶¶ 2-3; Kennedy Decl., ¶¶ 2-6.) Plaintiff and Class Counsel have  
23 vigorously prosecuted this case and will continue to do so. Any Settlement Class Member who  
24 wishes to opt-out of the Settlement may do so.

25           **F.     Class Certification Has Substantial Benefits**

26           Given that Plaintiff meets each of the elements for class certification, a class action  
27 settlement is the superior method of resolving the Settlement Class Members’ claims. (*See*  
28 *Sav-On, supra*, 34 Cal.4th at pp. 339-40; *Bell, supra*, 115 Cal.App.4th at pp. 745-46.)

1           Moreover, certification of this case as a class action would substantially benefit the  
2 litigants, the Court, and the general public. Class certification provides a method to vindicate the  
3 statutory rights of individual employees who may not otherwise assert those rights because they  
4 fear coming forward against their employer. (*Bell, supra*, 115 Cal.App.4th at p. 745.) Also,  
5 class certification benefits individual employees when the relatively small value of their  
6 individual claims would make it economically unfeasible to litigate them separately. Class  
7 certification would overcome these impediments and allow hundreds of current and former  
8 performers at Defendants’ Clubs to resolve their claims in one forum, eliminating repetitive  
9 litigation, and reducing the risk of inconsistent judgments. (*Sav-On, supra*, 34 Cal.4th at pp.  
10 339-40.)

11           Most importantly, all Class Members who continue to work for Defendants **will all be**  
12 **converted to W-2 employees no later than 30 days of the date of final approval.** That  
13 conversion alone—which was an essential bargained-for condition in the Parties’ Stipulation and  
14 Settlement Agreement—will confer huge benefits to the Class and the general public.

15           A settlement class action is thus superior to multiple individual actions regarding the  
16 same legal questions based on the same uniform policies and procedures.

17 **VI. THE COURT SHOULD APPROVE THE NOTICE OF SETTLEMENT AND SET**  
18 **A FINAL APPROVAL HEARING**

19           In addition to seeking approval of the Settlement and provisional class certification,  
20 Plaintiff requests the Court approve the form, content, and distribution of the Notice, and set a  
21 date for a final approval hearing. California Rule of Court 3.769(e) provides that if the Court  
22 grants a motion for preliminary approval, its order must include the time, date, and place of the  
23 final approval hearing; the notice to be given to the Class; and any other matters deemed  
24 necessary for the proper conduct of a settlement hearing. Notice to the class of the final  
25 judgment will be posted on the claims administrator’s website and in the Clubs’ dressing rooms.  
26 Here, if the Court grants this motion, Plaintiff requests that it set a final approval hearing on or  
27 around February 2021. Plaintiff further requests the Court approve the Notice, Class Member  
28

1 Claim Form, Request for Exclusion Form, and proposed Order Granting Preliminary Approval,  
2 attached as Exhibits “A,” “B,” “C,” and “D” to the Settlement Agreement.

3 **VII. CONCLUSION**

4 This arm’s-length settlement avoids significant litigation risk and makes the Settlement  
5 amounts available to approximately 900 Settlement Class Members. Plaintiff respectfully  
6 requests the Court preliminarily approve the Settlement, certify the Class for settlement purposes  
7 only, approve the proposed Notice and notice plan, and set a hearing on final approval at the  
8 Court’s convenience in February 2021.

9  
10 Dated: October 13, 2020

FORTIS LLP

11  
12 By: /s/ Peter E. Garrell  
13 Peter E. Garrell  
14 John M. Kennedy  
15 Attorneys for Plaintiff  
16 ADRIANA HERNANDEZ, individually, and  
17 on behalf of all others similarly situated  
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**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 650 Town Center Drive, Suite 1530, Costa Mesa, California 92626. On October 13, 2020, I served the within document(s) described as:

**PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

on the interested parties in this action as stated below:

*Attorneys for Defendants 2523 E. Anaheim, Inc. dba XS Afterhours Gentlemens Club and The Palms Gentlemens Club:*

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Martin M. Shapero  
SHAPERO & SHAPERO  
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*mshapero@shaperoandshapero.com*

BY ELECTRONIC TRANSMISSION VIA CASE ANYWHERE: I caused said document(s) to be sent to the parties listed on the Electronic Service List maintained by Case Anywhere in the manner set forth in the Court’s Order Authorizing Electronic Service dated July 29, 2019.

BY MAIL: By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 13, 2020, at Costa Mesa, California.

\_\_\_\_\_  
Lisa Dancel  
(Type or print name)

\_\_\_\_\_  
*/s/ Lisa Dancel*  
(Signature)