

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

*Cortez, et al. v. Choice Hotels International, Inc. et al.*

*Alameda County Superior Court Case RG17847671*

### **A. PARTIES**

1. This Settlement Agreement and Release of Claims (hereinafter “AGREEMENT”) is made by and between the following parties:

(a) Plaintiff CITY OF OAKLAND (hereinafter “CITY”);

(b) Defendants HEMANT INVESTMENTS, LLC, VIJAYKUMAR PATEL, AND DAN KARKI (hereinafter “HEMANT DEFENDANTS”); and

(c) Defendant CHOICE HOTELS INTERNATIONAL, INC. (hereinafter “CHOICE”)

2. CITY, HEMANT DEFENDANTS, and CHOICE are at times referred to herein collectively as “SETTLING PARTIES” and individually as “SETTLING PARTY.” HEMANT DEFENDANTS and CHOICE are at times referred to herein collectively as “DEFENDANTS.”

3. When referred to herein, SETTLING PARTIES, and each of them, include their heirs, successors, assignees, designees, attorneys, shareholders, members, partners, officers, directors, managers, employees, employers, principals, agents, parent companies, subsidiary companies, predecessors-in-interest, successors-in-interest, insurers, subcontractors, except as expressly set forth herein below.

### **B. RECITALS**

1. **WHEREAS**, this matter involves allegations by CITY and individual employee Plaintiffs (“Employee Plaintiffs”) regarding acts and omissions by HEMANT DEFENDANTS and CHOICE in conjunction with wage and hour, sick leave, and/or labor practices at the Quality Inn hotel located at 8471 Enterprise Way, Oakland California, 94621 (hereinafter the “HOTEL”);

2. **WHEREAS** the CITY and individual employee Plaintiffs filed their operative First Amended Complaint (“Complaint”) on April 12, 2017 in the Alameda County Superior Court, entitled *Cortez et al. v. Choice Hotels International, Inc. et al.* Case No. RG17847671, against HEMANT DEFENDANTS and CHOICE asserting the following causes of action: (1) failure to pay minimum wages for all hours worked under state law, (2) failure to pay minimum wage for all hours worked under the Oakland Municipal Code, (3) failure to pay for all hours worked, (4) failure to pay overtime compensation, (5) failure to provide meal periods, (6) failure to authorize and permit rest actions, (7) unreimbursed business expenses, (8) waiting time penalties, (9) failure to provide accurate wage statements, (10) failure to maintain accurate payroll records, (11) violations of California Healthy Workplaces and Families Act, (12) violations of Oakland Paid Sick Leave Ordinance, (13)

violations of the Unfair Competition Law, and (14)-(16) for integrated enterprise, individual, and Labor Code §§ 238.5 and 2810.3 liability (the “ACTION”);

3. **WHEREAS** the Complaint in the ACTION alleged conduct and/or omissions by DEFENDANTS in support of the causes of action noted above (“SUBJECT INCIDENT”);

4. **WHEREAS**, DEFENDANTS deny, and continue to deny, any and all liability to CITY and the Employee Plaintiffs;

5. **WHEREAS** the ACTION involves disputed questions of fact and law, and in order to avoid the uncertainties and costs of further litigation, trials, and appeals, and without any admission of liability or fault whatsoever, it is the intent of the SETTLING PARTIES to settle and release any and all claims of the CITY against DEFENDANTS arising out of, or related in any way to, the ACTION, the SUBJECT INCIDENT and/or any and all other allegations, claims, and defenses related to the ACTION, not including the enforcement of this Agreement.

**NOW, THEREFORE**, in consideration of the covenants contained herein, the SETTLING PARTIES do hereby agree as follows:

**C. SETTLEMENT TERMS**

1. Incorporation of Recitals: The Recitals above are incorporated by reference as though set forth hereinafter.

2. Settlement Payment and Dismissals:

(a) HEMANT DEFENDANTS’ Consideration: The consideration for settlement of all claims of CITY against DEFENDANTS arising out of or related to the SUBJECT INCIDENT and/or the ACTION and the dismissal of CITY’s Complaint in the ACTION with prejudice as to DEFENDANTS is as follows:

(i) Upon receipt of a fully executed copy of this AGREEMENT and within thirty (14) days of receipt of the fully executed AGREEMENT, HEMANT DEFENDANTS shall issue payment to CITY, via delivery to its counsel of record, the combined amount of Forty-Five Thousand Eight Hundred and One (\$45,801.00) for Measure FF penalties and attorneys’ fees. The payment to the City shall be used for future affirmative litigation and civil law enforcement.

(ii) The Employee Plaintiffs have been separately compensated through a confidential settlement agreement.

(b) The above-referenced consideration of DEFENDANTS to be paid to CITY as set forth in section C.2.(a)(i) shall be paid as follows:

- (i) Payment to CITY will be made payable to:

**“CITY OF OAKLAND”** [Tax ID No.94-6000384]

and mailed, via certified mail, to:

**OAKLAND CITY ATTORNEY’S OFFICE  
ATTN: ERIN BERNSTEIN  
ONE FRANK H. OGAWA PLAZA, 6TH FL.  
OAKLAND, CA 94612**

- (c) Injunctive Relief: HEMANT DEFENDANTS agree to permanently comply with the aforementioned laws and the injunctive relief detailed in **Exhibit A**, attached hereto.
- (d) The execution of this AGREEMENT and the completion of the above-described acts is conclusively deemed to constitute full and final settlement of the ACTION, SUBJECT INCIDENT, and all Released Matters.
- (e) Dismissals Entered upon Payment: Within twenty (20) days of receipt of the foregoing Settlement Payment, CITY shall file a Request for Dismissal, with prejudice, of all claims in the ACTION against DEFENDANTS.

3. Release of Claims: In exchange for the consideration outlined herein, the receipt and sufficiency of which is acknowledged, SETTLING PARTIES covenant not to sue any other SETTLING PARTY, or other person released hereunder on claims arising from or related to the SUBJECT INCIDENT or ACTION. The SETTLING PARTIES acknowledge complete satisfaction of the litigation and ACTION, and fully, forever, finally, and completely release, relieve, acquit, discharge, compromise, waive, absolve, and hold harmless any other SETTLING PARTY from any and all causes of actions, claims, suits, liens, losses, damages, judgments, events, acts, omissions, demands, contracts, expenses, liens, covenants, debts, fees/costs, damages, personal injury, loss of income, and judgments, orders, and liabilities of every nature, kind and description whatsoever, in law or in equity, whether known or unknown, fixed or contingent, suspected or unsuspected, and whether or not concealed or hidden, latent or patent, which have existed, may have existed, might exist, or do exist, which pertain to the SUBJECT INCIDENT, the ACTION, and/or any other dispute between CITY and DEFENDANTS arising out of the ACTION and the SUBJECT INCIDENT or any of the claims asserted therein regarding the Employee Plaintiffs’ employment at the HOTEL, up to and through the date of execution of this AGREEMENT.

4. Enforcement: Nothing in the Agreement shall be deemed to limit the CITY’s rights to bring separate civil or administrative actions for any violations occurring or discovered subsequent to the Effective Date of the Agreement pursuant to Oakland Municipal Code § 5.92 *et seq.*

5. Waiver of Rights under Civil Code section 1542: SETTling PARTIES, and each of them, expressly acknowledge that they have received the advice of legal counsel concerning the provisions of California Civil Code section 1542, and that they are familiar with the provisions of California Civil Code section 1542, which provide as follows:

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

SETTLING PARTIES further acknowledge that they may have sustained damage, loss, cost, or expense that is presently unknown or unsuspected, and that such damage, loss, cost, or expense as may have been sustained may give rise to additional damage, loss, cost, or expense in the future. Nevertheless, SETTling PARTIES acknowledge that this AGREEMENT has been negotiated and agreed upon in light of this situation, and they hereby expressly waive any and all rights that they have under California Civil Code section 1542, or under any other state or federal law of similar effect, with respect to the releases they provide herein, but only as to the ACTION and SUBJECT INCIDENT up to and through the date of execution of this AGREEMENT.

6. Good Faith Settlement: SETTling PARTIES acknowledge and stipulate that this AGREEMENT was negotiated and entered into in good faith, following arms-length negotiations among SETTling PARTIES and their attorneys. SETTling PARTIES further acknowledge and stipulate that this AGREEMENT shall be deemed to constitute conclusive evidence of the good-faith nature of the negotiated settlement, and that this AGREEMENT may be submitted in support of any motion or stipulation brought to obtain a good-faith determination (*e.g.*, pursuant to Code of Civil Procedure § 877.6).

7. Injunctive Relief: In conjunction with this AGREEMENT, HEMANT DEFENDANTS shall permanently agree to injunctive relief regarding the HOTEL. A copy of the agreed injunctive relief is attached hereto as **Exhibit A**. The injunctive relief attached as **Exhibit A** shall be enforceable through a civil action in Alameda County Superior Court per section D(4) below if, after 10 days' notice, HEMANT DEFENDANTS violating the injunctive relief agreement do not remedy its violations.

#### **D. GENERAL PROVISIONS**

1. Incorporation of Recitals: The Recitals above are incorporated by reference as though set forth hereinafter.

2. Binding Effect: This AGREEMENT shall be binding upon the SETTling PARTIES, except as set forth hereinabove.

3. Fees and Costs: Except as provided herein, the SETTling PARTIES shall each bear their own costs, including attorneys' fees, expert costs, liens, and any other costs incurred in or with respect to the ACTION and SUBJECT INCIDENT, including the preparation, drafting, and execution of this AGREEMENT and with respect to the compliance with their respective

obligations as set forth herein following a breach of any of its material terms by any other SETTLING PARTY.

4. Disputes: Notwithstanding the provisions of Part D.3 of this AGREEMENT, any disputes concerning application, interpretation, and/or breach of this AGREEMENT arising between the SETTLING PARTIES following execution of this AGREEMENT, shall be submitted to the Alameda County Superior Court pursuant to Code of Civil Procedure section 664.6 and the Alameda County Superior Court shall retain jurisdiction for that purpose. The prevailing party in any such subsequent litigation shall be entitled to reasonable attorneys' fees, investigative expenses, expert and consultant fees, and court costs incurred in such an action. The venue of any such dispute shall be the County of Alameda, and controlling law shall be the law of the State of California.

5. No Admissions: This AGREEMENT is entered into solely for purposes of compromise of the specific disputed claims set forth herein, and each party expressly agrees and acknowledges that no other party has admitted, and by execution and performance of this AGREEMENT, does not admit, any liability, wrongdoing, or obligation to any other party.

6. Inclusive Language: Whenever in this instrument the context requires the masculine, feminine, and/or neutral gender, each shall be deemed to include the other, and the singular and plural are each deemed to refer to the other.

7. Severability: If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this AGREEMENT, unless said term or provision is provided herein or determined to be a material term or provision of this AGREEMENT.

8. Controlling Law: This AGREEMENT, its validity, the construction of its terms, and the interpretation of rights and duties of the parties hereto, shall be governed and construed under the laws of the State of California and the City of Oakland.

9. Counterparts: This AGREEMENT may be executed in one or more counterparts, each of which, after each of the SETTLING PARTIES has signed and delivered, through counsel, at least one such counterpart to each other SETTLING PARTY, shall have the same force and effect as an original executed by all SETTLING PARTIES, and photo copies of signatures shall have the same force and effect as original signatures. Notwithstanding, this AGREEMENT shall not be effective unless and until all SETTLING PARTIES have exchanged all signatures hereto with each other.

10. Fully-Integrated Contract: Including attachment "A", this AGREEMENT contains the entire settlement and release of the parties, and the terms of this AGREEMENT are contractual.

11. Modification: No modification, amendment, or waiver of any of the provisions contained in this AGREEMENT shall be binding unless made in writing and signed by all of the affected SETTLING PARTIES and/or by their duly authorized officers or agents.

12. Third Party Beneficiaries: This AGREEMENT is not intended, nor shall it be construed, to create or confer any rights or benefits in anyone not a party hereto except as provided herein.

13. Joint Drafting: The SETTLING PARTIES hereby acknowledge and agree that the drafting and finalizing of this AGREEMENT is the product of a joint-effort by all SETTLING PARTIES, and/or their respective legal counsel, and that, as a result, any ambiguity in this AGREEMENT shall not be interpreted to the detriment of any party to this AGREEMENT on any basis, including an application of any statutory or common law rule that may construe ambiguity against the drafting party.

14. Factual Uncertainty: The SETTLING PARTIES hereby acknowledge that each may hereafter discover facts different from, and/or in addition to, those that each now knows or believes to be true with respect to the claims and other matters herein released, and each agrees that this AGREEMENT shall be and remain in full force and effect in all respects, notwithstanding any such different or additional facts.

15. Independent Judgment: Each of the SETTLING PARTIES executes this AGREEMENT, acting upon his or her independent judgment and with the advice of his or her respective legal counsel without any representations or inducements, express or implied, of any kind or nature, from each to the other, or from any other party, except as specifically set forth herein.

16. Legal Representation: In reaching this settlement and signing this AGREEMENT, all SETTLING PARTIES have been counseled and recommended to seek the advice of an attorney to discuss the facts and circumstances of the ACTIONS and settlement reached, and the terms and conditions of this AGREEMENT do so.

17. Authority: All parties executing this AGREEMENT have authority to do so.

18. Effectuation: SETTLING PARTIES agree and covenant to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force to the basic terms and intent of this AGREEMENT and which are not inconsistent with its terms.

19. Voluntary Execution: The SETTLING PARTIES represent and warrant that they understand the contents of this AGREEMENT and have executed it voluntarily. Each of the SETTLING PARTIES understand and acknowledge that, after executing this AGREEMENT, it cannot proceed against the other SETTLING PARTIES released on account of the matters released in this AGREEMENT.

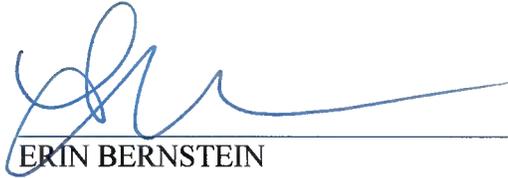
**IN WITNESS WHEREOF** the SETTLING PARTIES hereto have accepted this AGREEMENT on the dates specified below.

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

*Cortez, et al. v. Choice Hotels International, Inc. et al.*

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DATED: 9/26/18



ERIN BERNSTEIN  
OAKLAND CITY ATTORNEY'S OFFICE  
Attorneys for Plaintiff the CITY OF OAKLAND

DATE: \_\_\_\_\_

\_\_\_\_\_  
Vijay Patel, individually and on behalf of Hemant  
Investments LLC

DATE: \_\_\_\_\_

\_\_\_\_\_  
Stuart Kreindler, on behalf of CHOICE HOTELS  
INTERNATIONAL, INC.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
ROBERT WALLACE  
ROBERT WALLACE LAW  
Attorney for HEMANT DEFENDANTS

DATE: \_\_\_\_\_

\_\_\_\_\_  
GINA H. LINDELL  
GORDON REES SCULLY MANSUKHANI  
Attorney for CHOICE HOTELS  
INTERNATIONAL, INC.

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

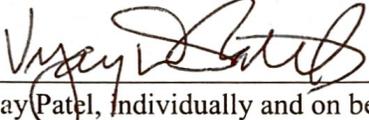
*Cortez, et al. v. Choice Hotels International, Inc. et al.*

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DATED: \_\_\_\_\_

\_\_\_\_\_  
ERIN BERNSTEIN  
OAKLAND CITY ATTORNEY'S OFFICE  
Attorneys for Plaintiff the CITY OF OAKLAND

DATE: 09/28/2018

  
\_\_\_\_\_  
Vijay Patel, individually and on behalf of Hemant  
Investments LLC

DATE: \_\_\_\_\_

\_\_\_\_\_  
Stuart Kreindler, on behalf of CHOICE HOTELS  
INTERNATIONAL, INC.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
ROBERT WALLACE  
ROBERT WALLACE LAW  
Attorney for HEMANT DEFENDANTS

DATE: \_\_\_\_\_

\_\_\_\_\_  
GINA H. LINDELL  
GORDON REES SCULLY MANSUKHANI  
Attorney for CHOICE HOTELS  
INTERNATIONAL, INC.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ERIN BERNSTEIN  
OAKLAND CITY ATTORNEY'S OFFICE  
Attorneys for Plaintiff the CITY OF OAKLAND

DATE: \_\_\_\_\_

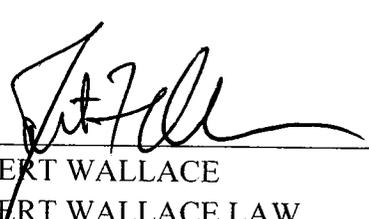
\_\_\_\_\_  
Vijay Patel, individually and on behalf of Hemant  
Investments LLC

DATE: \_\_\_\_\_

\_\_\_\_\_  
Stuart Kreindler, on behalf of CHOICE HOTELS  
INTERNATIONAL, INC.

**APPROVED AS TO FORM:**

DATE: 9/28/18

  
\_\_\_\_\_  
ROBERT WALLACE  
ROBERT WALLACE LAW  
Attorney for HEMANT DEFENDANTS

DATE: \_\_\_\_\_

\_\_\_\_\_  
GINA H. LINDELL  
GORDON REES SCULLY MANSUKHANI  
Attorney for CHOICE HOTELS  
INTERNATIONAL, INC.

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Page 7 of 7

DATED: \_\_\_\_\_

ERIN BERNSTEIN  
OAKLAND CITY ATTORNEY'S OFFICE  
Attorneys for Plaintiff the CITY OF OAKLAND

DATE: \_\_\_\_\_

Vijay Patel, individually and on behalf of Hemant  
Investments LLC

DATE: 9/21/18

  
Stuart Kreindler, on behalf of CHOICE HOTELS  
INTERNATIONAL, INC.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

ROBERT WALLACE  
ROBERT WALLACE LAW  
Attorney for HEMANT DEFENDANTS

DATE: 9/26/18

  
GINA H. LINDELL  
GORDON REES SCULLY MANSUKHANI  
Attorney for CHOICE HOTELS  
INTERNATIONAL, INC.

## **Exhibit A**

### **Injunctive Relief**

The provisions of this injunctive relief are applicable to the Quality Inn hotel located at 8471 Enterprise Way, Oakland, CA 94621 (“Hotel”).

Hotel shall comply with all federal, state, and local laws. Defendants also agree to the following injunctive relief, unless superseded by existing federal, state, and/or local law:

### **Wage and Hour**

1. Provide all non-exempt employees at least one ten-minute paid rest break every four hours or major fraction thereof.
2. Provide all non-exempt employees a thirty-minute uninterrupted meal period for every five hours worked, starting no later than the end of their fifth hour of work.
3. Provide a break room for all employees to take breaks and eat meals in.
4. Instruct all Hotel employees to input the precise minute they start and end any work at the Hotel, and start and end their meal breaks. Hotel shall maintain records of actual start and end times, and only round times for payment as consistent with state law.
5. Comply with state and federal overtime laws, including providing proper compensation for daily, weekly, and seventh-day overtime work.

### **Sick Leave**

1. Hotel shall perform an accounting of sick hours to ensure that all current employees receive all sick hours accumulated since enactment of local and state sick leave laws.
2. Hotel shall comply with all local and state sick leave laws, including the requirement to show accumulated sick time on pay stubs or wage statements.
3. Hotel shall grant sick time to its employees when requested, provided that said employee has sufficient accumulated sick leave hours.

### **Health and Safety**

1. Housekeepers shall not be required to fumigate rooms.
2. Housekeepers shall not be required to handle hazardous materials without the licensing, training, Personal Protective Equipment (PPE), and/or safety equipment mandated by federal, state, and local law. Any required licensing, training, PPE, and/or safety equipment for such work will be provided by the Hotel.
3. Hotel shall provide all employees with any and all PPE (including masks, gloves and/or protective clothing) reasonably needed to safely perform their job duties. Hotel shall provide this PPE in a timely manner upon reasonable request.
4. Hotel shall conduct regular maintenance and safety checks to ensure that all elevators and security systems are functional and active.

## **General Hotel Policies**

Hotel shall:

1. Hang posters in public areas, such as the aforementioned break room, detailing local, state, and federal employment and labor laws, as required by law. These posters shall be in every primary language spoken by Hotel's employees.
2. Provide written policy manual in all employees' primary languages.
3. Inform all employees that the Hotel will not retaliate against them for any complaints about wage-and-hour or health-and-safety issues.
4. Provide all needed cleaning supplies to its housekeepers in a timely manner.
5. Timely reimburse any business expense incurred by employees.
6. Conduct trainings for housekeepers and supervisors on proper timekeeping and meal and rest break requirements.
7. For a period of two years from the date of this agreement, allow a representative from or contracted by the City of Oakland ("City") to conduct bi-annual spot checks of timekeeping and payroll systems and speak with current housekeepers to ensure compliance with this agreement. The City's representative may conduct these bi-annual checks either with a letter requesting recent earning statements and time records, or by appearing in-person to request such documents and to speak with current housekeepers.
8. Hotel shall not prevent or discourage any employee from speaking with a representative from or contracted by the City of Oakland.
9. Hotel shall not retaliate against any employee for speaking with a representative from or contracted by the City of Oakland.
10. All notification(s) of compliance under this Agreement to the City of Oakland will be terminated upon Hemant Investments, LLC's sale of the hotel to a bona fide third party, and will be held in abeyance upon lease of the hotel to a bona fide third party in control of hotel operations, to be reinstated at the conclusion of such lease.

**END OF AGREEMENT**