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9 behalf of themselves, all others similarly situated,  
10 and the general public

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 PHILIP ALLEN, BRIAN CALDER, and  
14 TINA SABOURI, individuals, on behalf of  
15 themselves, all others similarly situated, and  
16 the general public,

17 Plaintiff,

18 vs.

19 PEAK DMC NORTH AMERICA, INC, a  
20 California corporation (formerly known as  
21 SUNTREK TOURS, INC., a California  
22 corporation), dba INTREPID SUNTREK; and  
23 DOES 1 to 100, inclusive,

24 Defendants.

) CASE NO.: BC462363

) Assigned for all purposes to Hon. Mary H.  
Strobel, Dept. 32

) **CLASS ACTION: (Plaintiff Class - CCP §**  
25 **382)**

26 **REVISED STIPULATION AND**  
27 **AGREEMENT OF COMPROMISE,**  
28 **SETTLEMENT, AND RELEASE**

) Date: January 23, 2014  
) Time: 8:30 a.m.  
) Dept.: 32

29 Attached please find the **REVISED STIPULATION AND AGREEMENT OF**  
30 **COMPROMISE, SETTLEMENT, AND RELEASE** (the Settlement Agreement), along with  
31 the revised notice, revised claim form and previously submitted FLSA consent form (all of

32 **REVISED STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE**

1 which are exhibits to the settlement agreement), which Settlement Agreement has been revised to  
2 address the concerns expressed by the Court at the initial hearing on preliminary approval on  
3 November 25, 2013.  
4

5 Dated January 20, 2014

THE CULLEN LAW FIRM, APC

6  
7 By:   
8 Paul T. Cullen  
9 Attorneys for Plaintiff  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

Philip Allen, Brian Calder, and Tina Sabouri on behalf of themselves and all others similarly situated,	)	CASE NO.: BC462363
	)	
Plaintiffs,	)	<b>REVISED STIPULATION AND</b>
	)	<b>AGREEMENT OF COMPROMISE,</b>
v.	)	<b>SETTLEMENT, AND RELEASE</b>
	)	
SUNTREK TOURS, INC., a California corporation, d.b.a. INTREPID SUNTREK, INTREPID TRAVEL PROPRIETARY LIMITED, an Australian proprietary company, and DOES 1-100, inclusive,	)	
	)	
Defendants.	)	

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**STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT,  
AND RELEASE**

This revised Stipulation and Agreement of Compromise, Settlement, and Release (“Settlement Agreement”) is made and entered into between Plaintiffs, Philip Allen, Brian Calder, and Tina Sabouri, plaintiffs in the proposed class and collective action lawsuits (hereafter jointly referred to as “Plaintiffs” or “Class Representatives” unless otherwise specified), on the one hand, individually and on behalf of the Classes (as defined below), by and through their counsel of record, Paul Cullen of The Cullen Law Firm, APC (“Class Counsel”), and Defendants Peak DMC North America, formerly known as SunTrek Tours, Inc. dba Intrepid SunTrek, [sometimes referred to as “PEAK” or “SunTrek”] and Intrepid Travel Proprietary Limited, an Australian proprietary company (sometimes referred to as ITPL) including Defendants’ predecessors, successors, affiliates, owners, parents, subsidiaries and related companies on the other hand (all of said defendants may be referred to collectively as “Defendants”), by and through their counsel of record, Leslie Mann and Joseph D. Miller of Miller and Mann LLP, and Holly Hempel of Nelson Mullins Riley & Scarborough LLP, subject to the approval of the Court, as provided below. This Settlement Agreement is intended by Plaintiff and Defendants to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof, as follows:

1. Definitions.

The following terms are defined:

- 1.1 “Action” refers to the civil action *Allen et al v. Peak DMC North America, et al*, Los Angeles Superior Court, Central District, Case No. BC462363 (filed May 25, 2011) for which the operative complaint shall be the Third Amended Complaint referred to in Paragraph 2.7 below.
- 1.2 The FLSA “Collective Class” refers to all individuals who will be certified as members of the Collective Class for settlement purposes only, which will be defined as follows:
  - 1.2.1 All Group Leaders (also known as Trip Leaders, Tour Guides and/or Tour Leaders and similarly titled employees) employed by Defendants during the Relevant Collective Action Time Period, i.e. within the past three

years preceding the filing on June 13, 2012 of the original Complaint herein (i.e. June 13, 2009) up through August 31, 2013 within the United States.

- 1.2.2 To become a member of the FLSA Collective Action, the proposed class member must file with the Claims Administrator a written consent opting in to the Settlement.
- 1.3 “Claim Deadline” refers to a date that is sixty (60) calendar days after the Notice Date, as such date may be modified by the Court, and is the deadline by which Class Members’ Claim Forms must be postmarked, e-mailed, or faxed to the Claims Administrator in order to be valid.
  - 1.3.1 “Claim Form” refers to the Claim Form, a draft version of which is attached hereto as Exhibit C, with the final version to be approved by the Court. That form shall describe the method of distribution of Settlement Proceeds to the Class as described in paragraph 6, below. Each Settlement Class Member who executes a Claim Form shall do so under penalty of perjury.
- 1.4 The “Class” refers to all individuals, including the Class Representatives who will be certified as members of the Class for settlement purposes only, which will be defined as follows:
  - 1.4.1 All of Defendants’ Group Leaders (who were also known as Trip Leaders, Tour Guides, Tour Leaders, and/or Group Leader trainees) who worked for Defendants or Released Parties in the United States for full and/or partial days during the Relevant Class Action Time Period (i.e. between May 25, 2007 and August 31, 2013), including, but not limited to the time Group Leaders spent in training.
  - 1.4.2 One subclass, i.e. the California Former Employee Subclass or the Labor Code 203 Sub-Class: “All Class members who worked as a Group Leader, Trip Leader, Tour Guide, Tour Leader, and/or Group Leader trainee

during the period of May 25, 2008 to August 31, 2013 but who are no longer employed by Defendants herein.”

- 1.5 “Class Counsel” refers to the attorneys of record for the Class Representative, i.e., Paul T. Cullen and The Cullen Law Firm, APC.
- 1.6 “Class Member” shall mean any individual who is in the Class defined in Paragraph 1.4.1, above.
- 1.7 “Class Notice” refers to the form of direct-mail notice to Class Members substantially in the form attached hereto as Exhibit A, as may be modified by the Court.
- 1.8 “Class Member Payment” shall refer to the amount paid to a Settlement Class Member.
- 1.9 “Class Period” or “Relevant Class Action Time Period” refers to the time from May 25, 2007 through August 31, 2013.
  - 1.9.1 “Class Position” refers to the employment position known as Group Leader who were also known as Trip Leaders, Tour Guides, Tour Leaders, and/or Group Leader trainees who worked for Defendants or Released Parties in the United States.
- 1.10 “Class Representative(s)” refers to Philip Allen, Brian Calder, and Tina Sabouri in this litigation, who are the Plaintiffs herein. All three of these Class Representatives are the representatives of the Class (and its subclass) defined in Paragraph 1.4, above. Philip Allen and Brian Calder are the representatives of the FLSA Collective Class defined in Paragraph 1.2, above.
- 1.11 “Collective Class Members” shall mean all individuals who are in the class defined in Paragraph 1.2.1, above.
- 1.12 “Collective Class Period” or “Relevant Collective Action Time Period” refers to the time from June 13, 2009 through August 31, 2013.

- 1.13 “Court” refers to the Los Angeles Superior Court, Central District, to which this Action is assigned (Dept. 32, Hon. Mary H. Strobel, Judge presiding).
- 1.14 “Fairness Hearing” refers to the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval, and, if the Settlement is so approved, whether a judgment should be entered thereon, whether the Class Representative’s application for a service fee should be granted, and whether an application by Class Counsel for an award of reasonable attorneys’ fees and reimbursement of his reasonable costs and expenses should be granted.
- 1.15 “Federal Court Action” refers to the civil action entitled *Allen et al v. SunTrek Tours Peak DMC North America et al*, Case No. CV12-5165-CAS (JCGx), in the United States District Court, Central District of California.”]
- 1.16 “Final Approval Order” refers to the final order by the Court approving the Settlement following the Fairness Hearing.
- 1.17 “Final Effective Date” refers to the first day after the date by which the last of the following has occurred: (a) all conditions of settlement as set forth in Paragraph 24 have been satisfied; (b) the Court has entered the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, or all such appeals have been voluntarily or involuntarily dismissed or the appropriate appellate court has finally affirmed the Final Approval Order and Judgment of the Court and the final judgment is no longer subject to any further appellate challenge or procedure. However, if no objection has been filed or all such objections as may have been filed have been withdrawn, then the Final Effective Date will be the date the Court enters the Final Approval Order and Judgment.
- 1.18 “First Amended Complaint” refers to the Complaint filed by Plaintiff Allen in the United States District Court, Central District of California on or about February 25, 2013, entitled

*Allen et al v. Peak DMC North America et al*, Case No. CV12-5165-CAS (JCGx).

- 1.19 “FLSA Consent Deadline” refers to a date that is sixty (60) calendar days after the Notice Date, as such date may be modified by the Court, and is the deadline by which Class Members’ FLSA Consent Forms must be postmarked, e-mailed or faxed to the Claims Administrator in order to be valid.
- 1.20 “FLSA Consent Form” refers to the FLSA Consent to opt into the FLSA claim stated in this Action, entitled CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT, is attached hereto as Exhibit B.
- 1.21 “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum settlement payment Defendants are obligated to make: ONE MILLION FOUR HUNDRED THOUSAND DOLLARS and zero cents (\$1,400,00.00). The GSA is consideration for the release and settlement, as to the Class Period, of all claims, known or unknown, under federal or state law, that were alleged or that reasonably could have arisen out of the facts alleged in the Action and the Federal Collective Action by Settlement Class Members relating to unpaid wages and overtime, wage-statement violations, record-keeping violations, and “waiting time” or other statutory penalties, claims for interest or fees of any kind or amount including attorneys fees while working in a Class position during the Class Period, and shall include, without limitation, any claim under the applicable Wage Order or under California Labor Code sections 201, 202, 203, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194 *et seq.*, 1198, 2698 through 2699.5, 2802 under Business and Professions Code section 17200 *et seq.*, or the Fair Labor Standards Act, relating to the facts alleged in support of the claims in the Action and Federal Court Action. The GSA shall be paid on a partial claims-made basis with a mandatory minimum payout as more fully described below to resolve the claims referred to in Paragraphs 16.1 through 16.3.
- 1.22 “Initial Complaint” refers to the Complaint filed by Plaintiff Allen in the Superior Court of the State of California, County of Los Angeles, on or about May 25, 2011, entitled *Allen v.*

*SunTrek Tours, Inc. et al*, Case No. BC462363, assigned for all purposes to Hon. Mary H. Strobel, Dept. 32.

- 1.23 “Judgment” refers to the final judgment by the Court approving the Settlement.
- 1.24 “Net Settlement Amount” (also referred to herein as “NSA”) shall be defined as the GSA minus Court-approved attorney’s fees and costs, the Claims Administrators administrative costs, and Class Representatives’ Service Fees. The NSA is the maximum amount that shall be made available to Class Members. After subtracting the \$7,500 allocated to (i) the Labor Code § 2802 Fund, the NSA shall be divided into the following funds: (ii) the Minimum Wage Payment Fund (which includes an allocation for Training Time), which shall amount to 48.7 % of the NSA; (iii) the Meal and Rest Break Fund, which shall amount to 12.4% of the NSA, (iv) the Wage Statement Fund, which shall amount to 14.6% of the NSA, and (v) the Waiting Time Penalty Fund, which shall amount to 24.3%, of the NSA. These percentages are approximate.
- 1.25 “Notice Date” refers to the date ordered by the Court for the dissemination of the direct mail notice to the Class Members, a date that is within fifteen (15) calendar days after the Preliminary Approval Order Date.
- 1.26 “Parties” refers collectively to Philip Allen, Brian Calder, Tina Sabouri and all other similarly situated plaintiffs, and to PEAK DMC North America, Inc., f.k.a. SunTrek Tours, Inc. dba Intrepid SunTrek, and Intrepid Travel Proprietary Limited, and to PEAK’s and ITPL’s predecessors, successors, affiliates, owners, parents, subsidiaries, and related companies.
- 1.27 “Preliminary Approval Motion” refers to the motion described in Paragraph 2.8 to be prepared jointly by the parties and submitted by Class Counsel to the Court to obtain preliminary approval of the Settlement.
- 1.28 “Preliminary Approval Order” refers to the order by the Court granting preliminary approval to the Settlement Agreement and

directing the parties to disseminate notice of the Settlement to the Class Members.

- 1.29 “Preliminary Approval Order Date” refers to the date on which the Court enters the Preliminary Approval Order.
- 1.30 “Released Claims” are those claims defined in Paragraphs 16.1 through 16.3.
- 1.31 The “Releasing Parties” are Allen, Calder, Sabouri and all Class Members who did not opt out of this Action by filing a timely, valid Request for Exclusion, and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.
- 1.32 “Request for Exclusion” refers to a written, signed request by someone who otherwise would be a member of the Class to be excluded from the Class and who meets the requirements, including the time and manner in which a Request for Exclusion must be filed.
- 1.33 “Service Fee” refers to the Court’s award of a monetary fee to the Plaintiffs for their services as Class Representatives as described in Paragraph 8, to be paid for from the Gross Settlement Amount described below.
- 1.34 “Settlement” refers to the Parties’ agreement to fully resolve the claims of the Settling Parties in the Action pursuant to the provisions in the Settlement Agreement.
- 1.35 “Settlement Administrator” refers to CPT Group, Inc., which will be engaged by Class Counsel, with the approval of counsel for Defendants, to perform the notice, settlement administration, and distribution functions further described in this Settlement Agreement. Defendants shall not oppose a reasonable Settlement Administrator’s fee to be taken from the GSA, so long as the Settlement Administrator's fee and

reimbursable costs awarded to Class Counsel do not collectively exceed \$61,500.

- 1.36 “Settlement Agreement” refers to this Settlement Agreement, including any permitted and executed amendments hereto.
- 1.37 “Settlement Class” refers to all Class Members as defined in Paragraphs 1.4 who do not request exclusion from the Settlement pursuant to Paragraph 20.1 of this Settlement Agreement and all Collective Class Members as defined in Paragraph 1.2 who have timely submitted FLSA Consent Forms.
- 1.38 “Settlement Class Member” refers to a Class Member as defined in Paragraph 1.4 who does not request exclusion from the Settlement pursuant to Paragraph 20.1 of this Settlement Agreement and/or a Collective Class Member as defined in Paragraph 1.2 who timely submits an FLSA Consent Form.
- 1.39 “Settling Parties” refers to the named Plaintiffs, the Settlement Class Members, Peak DMC North America, SunTrek Tours, Inc. dba Intrepid SunTrek, and Intrepid Travel Proprietary Limited.
- 1.40 The “State Court Action” refers to this lawsuit, or this Action.
- 1.41 “Third Amended Complaint” refers to the Complaint filed by Plaintiffs in this Court, in conjunction with a Stipulation Regarding Special Appearance of Defendant INTREPID TRAVEL PROPRIETARY LIMITED, an Australian proprietary company to the effect that ITPL shall not dispute future jurisdiction of the Los Angeles Superior Court for the limited purpose of enforcement of this Settlement Agreement only, but otherwise reserves the right to challenge jurisdiction.
- 1.42 “Tour Days” refers to the days on which any Class Member and/or Collective Class Member worked for any of the Defendants, including days actually leading tours, and days between tours (i.e. transfers), but does not include days spent in initial training prior to leading tours. The parties stipulate that, due to a lack of verifiable records between May 2007 and June 2009, Class Members, defined in Paragraph 1.4, who worked

between May 25, 2007 through December 31, 2007 shall be deemed to have worked 58 Tour Days; Class Members who worked in 2008 shall be deemed to have worked 58 Tour Days; and Class Members who worked in 2009 shall be deemed to have worked 10 additional Tour Days for the period January 1, 2009 through June 30, 2009 which shall be added to their total days worked in 2009 [each referred to as “stipulated day total”]. If the Class Member declares to have worked fewer days than the stipulated day total for each year on their Claim Form, then the member’s number of days shall apply. If the Class Member declares to have worked more days on their Claim Form, then the stipulated day total shall apply.

1.43 “Training Days” – refers to the road days in California from May 25, 2007 through December 31, 2011 in which any Class Member and/or Collective Class Member was subject to the control of the Defendants while undergoing training prior to commencing tours as a Group Leader. Each Class Member who declares to have worked as a Group Leader in 2007, 2008 or 2009 shall be entitled to recover for 7.75 days spent in training in California.

2. Factual and Procedural History and Recitals.

2.1 Defendant PEAK DMC NORTH AMERICA (formerly known as SUNTREK TOURS, INC.) (hereinafter “SunTrek”) is and was a California corporation, with a fictitious business name of INTREPID SUNTREK (hereinafter “SunTrek”). It is a provider of tourism van services starting in California and bringing tourists to various places throughout California and the United States.

2.2 Defendant Intrepid Travel Proprietary Ltd. (“ITPL”) is an Australian proprietary company that Plaintiffs allege (a) has been doing business in California and the United States, and (b) is and was the owner of SunTrek, and (c) has acted as an employer of Plaintiffs, Class Members, and Collective Class Members.

2.3 On or about May 25, 2011, Plaintiffs Philip Allen and Brian Calder filed their Initial Complaint in this State Court Action

State Court Action, alleging that Defendants violated various California Labor Code and Wage Order provisions, including the payment of minimum and overtime wages, the provision of meal and rest breaks, the provision of accurate itemized wage statements, and the payment of wages upon termination. The State Court Action also alleges that Defendants' alleged failure to comply with the above-mentioned California Labor Code provisions constitutes unfair business practices and unfair competition in violation of California Business & Professions Code §§ 17200, *et seq.* On or about October 5, 2011, Plaintiffs filed a First Amended Complaint adding Defendant Peak DMC North America, Inc., an updated party name (for the California corporation formerly known as SunTrek Tours, Inc., a California corporation).

- 2.4 On June 13, 2012, Plaintiffs filed the Federal Court Action asserting collective class claims against the Defendants, for themselves and “[a]ll others similarly situated, [who] are or were employed by Defendants as tour, trip, and group leaders.” The Federal Court Action alleges that Defendants failed to comply with the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* On February 25, 2013, Plaintiffs filed a First Amended Complaint in the Federal Court Action naming in addition to Peak DMC North America, Inc., the newly added defendant ITPL. Thereafter, Plaintiffs effectuated service on ITPL via the procedures set forth in the Hague Convention.
- 2.5 Plaintiff propounded substantial formal written discovery and conducted significant informal discovery in the State Court Action. Defendant PEAK responded to formal and informal requests and provided Plaintiffs with approximately 4,000 pages of documents. Plaintiffs and PEAK also conducted 8 depositions over 10 sessions.
- 2.6 On August 30-31, 2013 the Parties participated in a two-day mediation before mediator Hon. Justice Robert L. Dossee (Ret.) of JAMS. The parties reached the basic terms of a settlement and agreed to prepare a formal settlement agreement, subject to Court approval. The Parties now enter into a detailed, formalized Settlement Agreement for Court approval.

- 2.7 For purposes of settling not just this Action, but also the parallel Federal Court Action, the Parties agree that, prior to or concurrent with the filing the Preliminary Approval Motion, Class Counsel shall file a Stipulation for Leave to File a Third Amended Complaint in this Action, adding the sole cause of action in the Federal Court Action. All the material allegations of the Third Amended Complaint shall be deemed denied without the necessity of Defendants filing an Answer to the Third Amended Complaint and all claims will be deemed to have been filed in this Action as if filed on the same date as said claims were filed in the Federal Court Action.
- 2.8 Class Counsel shall file additional papers in support of the currently pending Preliminary Approval Motion requesting conditional class certification for settlement purposes only and request preliminary approval of the Settlement. For purposes of settling the Action only, Defendants will not oppose this Preliminary Approval Motion and will stipulate to preliminary approval. However, the foregoing shall not bar Defendants from commenting regarding any details regarding the implementation of the settlement that have not been completed prior to the Preliminary Approval Hearing.
- 2.9 Defendants deny any liability or wrongdoing of any kind, including but not limited to liability or wrongdoing that was alleged or could have been alleged in the Federal Court Action, the Initial Complaint, the First Amended Complaint, the Second Amended Complaint, and the Third Amended Complaint, and further deny that, for any purpose other than settling the Action, this Action is appropriate for class treatment. Defendants contend they have complied at all times with the California Labor Code, the California Wage Orders, and all applicable California state and federal laws.
- 2.10 Class Counsel represents that he has thoroughly investigated the Class Representatives' and the Classes' (i.e. the FLSA Collective Class as defined in 1.2 and the Class as defined in 1.4) claims against Defendants. Class Counsel represents that he has conducted his own investigation into the underlying facts, events, and issues related to the subject matter of this action. Class Counsel represents that he has analyzed the legal

principles applicable to the claims asserted against Defendants, and the potential defenses thereto. Both the Class Representatives and Defendants have had an opportunity to evaluate their respective positions on the merits of the claims asserted.

- 2.11 Class Counsel has engaged in intensive arm's-length negotiations with counsel for Defendants with a view toward achieving substantial benefits for the Class while avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate review.
- 2.12 As a consequence of negotiations, and of Class Counsel's investigation, analysis and discovery, Plaintiffs and Class Counsel determined to enter into this Settlement Agreement on the terms and conditions hereinafter set forth, believing the Settlement to be fair, reasonable and adequate and in the best interests of the members of the Class. Plaintiffs and Class Counsel have determined to execute this Settlement Agreement and urge approval by the Court of the proposed Settlement after considering (1) the substantial factual and legal defenses available to Defendants to the claims asserted in the Action, which render the outcome of the Action substantially uncertain, (2) the potential difficulties Plaintiffs and Settlement Class Members would encounter in establishing the elements of their claims, (3) the substantial benefits that Settlement Class Members shall receive pursuant to the proposed Settlement, (4) the fact that the proposed Settlement ensures that Settlement Class Members shall receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal, and (5) the fact that the proposed Settlement allows persons who would otherwise fall within the definition of the Class to opt out of the Action, if they so desire, and to individually pursue the claims alleged in the Action. Class Counsel has further considered that Defendants would oppose the propriety of class certification.
- 2.13 Defendants deny vigorously each allegation of liability and assert that they have substantial factual and legal defenses to all claims alleged. Nevertheless, without admitting any liability,

Defendants are willing to agree to the terms of the proposed Settlement provided that all of the Released Claims (as defined below) are settled in order to fully resolve all issues relating to the subject matter of the Action. Defendants also concur that the proposed Settlement is fair, reasonable, and adequate.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, Plaintiffs, on behalf of themselves and as the Class Representatives on behalf of the Classes and Subclass, Class Counsel and Defendants agree to the terms of this Settlement Agreement, subject to the approval of the Court.

3. Limitation on Effect of Certification.

3.1 The certification of the Classes for settlement purposes only shall not constitute, in this or any other proceeding, an admission by Defendants that certification of a class for trial purposes is appropriate or proper or that Plaintiffs could establish any element for class treatment of any claim. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class(es) shall be vacated and shall not constitute evidence that the requirements for certification of a class are satisfied. In such circumstances, Defendants expressly reserve all rights to challenge certification of a class for trial purposes in this Action or in any other action on all available grounds as if no class had been certified for Settlement purposes in this Action, and no reference to the prior certification of a class, or any documents related thereto, shall be made for any purpose.

4. Establishment of the GSA Settlement.

4.1 Defendants shall pay no more than the GSA of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS and zero cents (\$1,400,000.00), except as otherwise expressly provided for in this Settlement Agreement.

4.2 This GSA being offered in settlement is based on the number of Tour Days Defendants represented on August 31, 2013 to have been worked by putative Class members from the period of

May 25, 2007 through August 31, 2013, with the total number of Tour Days computed by Defendants to be approximately 49,300 days in the United States. If this number of Tour Days in the United States worked by members of the Classes between May 25, 2007 and August 31, 2013 understates the actual number of working days by more than 15% (i.e. if the actual number exceeds 56,695), the GSA shall be adjusted proportionately upwards to account for any such difference.

- 4.3 Payment by Defendants pursuant to this Settlement Agreement shall settle all pending issues between the Settling Parties, including, but not limited to, all payments of class claims, administration costs, attorneys' fees and costs, and service fees.
- 4.4 Defendants shall be responsible for paying the employer's share of Social Security taxes and FUTA taxes owing on the portion of the GSA that is allocated to wages and is included in the amounts allocated to the Minimum Wage Fund and the Meal and Rest Break Fund. Thus, if there is less than full participation, for example if the dollar value of claims submitted is \$500,000 (thus exceeding the mandatory minimum payout of \$470,000, as noted below), Defendants will pay said employer-side Social Security and FUTA taxes in addition to the \$500,000 payable for the claims submitted. However, to the extent participation in the Settlement requires Defendants to pay near or equal to the NSA, Defendants will not be obligated to pay said employer-side taxes in addition to the NSA; rather, the amounts paid out to satisfy claims shall be proportionately reduced on a pro rata basis to the extent necessary to satisfy Defendants' obligations hereunder to pay said employer-side taxes.

## 5. Calculation of the NSA.

- 5.1 Assuming the Court approves fees, costs, and class representative enhancements at the maximum amount allowed hereunder, the NSA is \$854,000 and is calculated by subtracting from the GSA of \$1,400,000 the following amounts: attorney's fees of \$462,000, the aggregate amount of litigation costs and administrative costs not to exceed \$61,500, and Class Representative Service Fees of \$22,500. The NSA

constitutes the maximum total amount of money that may potentially be paid to the Class Members.

5.2 Defendants agree that at a minimum they will pay \$470,000 to all valid claimants. Assuming that all the attorney's fees, costs and service fees as described in Paragraph 5.1 are approved by the Court, Defendants shall pay out \$1,038,500 even if less than \$470,000 is claimed. If less than \$470,000 of the NSA is claimed, the amounts paid out to individual claimants shall be increased proportionately on a pro rata basis so that the aggregate amount paid out to participating claimants equals \$470,000. On the other hand, Defendants will pay all claims in excess of \$470,000 on a claims made basis not to exceed the amount of the NSA. In other words, the amounts not paid out where more than \$470,000 but less than 100% of the NSA is claimed will be retained by Defendants.

5.3 The NSA shall be divided into the following funds, the amounts of which shall be as follows: after subtracting the \$7,500 allocated to (i) the Labor Code § 2802 Fund, the balance of the NSA allocable to (ii) the Minimum Wage Payment Fund (which includes an allocation for Training Time) shall amount to 48.7% of the NSA, (iii) the Meal and Rest Break Fund shall amount to 12.4% of the NSA, (iv) the Wage Statement Fund shall amount to 14.6 % of the NSA, and (v) the Waiting Time Penalty Fund shall amount to 24.3% of the NSA. These percentages are approximate.

## 6. Distribution of Settlement Proceeds.

6.1 Each Settlement Class Member (as defined in paragraph 1.38, above) will be paid from the Minimum Wage Payment Fund a portion of the NSA in accordance with the individual Settlement Class Member's Tour Days worked or deemed to have been worked in California for the relevant time frame (May 25, 2007 through August 31, 2013) and each Settlement Class Member who opts into the FLSA claim in this Action will be paid from the Minimum Wage Payment Fund a portion of the NSA in accordance with the individual Settlement Class Member's Tour days worked or deemed to have been worked outside of California for the relevant time frame (June 13,

2009<sup>1</sup> through August 31, 2013). Time spent in training will also be paid from the Minimum Wage Fund based on the number of Training Days as stipulated between the Parties. The parties have stipulated that Defendants' records will be used to determine the Class Members who were trained from 2010 through 2011 and the number of recoverable training days for those trainees. 76% of the Minimum Wage Fund is allocated to payment for Tour Days; whereas, 24% of the Minimum Wage Fund is allocated to payment for training.

- 6.2 Each Settlement Class Member will be paid from the Meal and Rest Break Fund in accordance with the individual Class Member's Tour Days worked in California during the relevant time frame (May 25, 2007 through August 31, 2013) as compared to the aggregate number of Tour Days worked or deemed to have been worked in California during the relevant time frame by all Class Members.
- 6.3 Each Settlement Class Member will be paid from the Wage Statement Fund a portion of the NSA based on the following formula: Each Settlement Class Member will be deemed to have received a wage statement for every 15 Tour Days. Thereafter, the number of wage statements the individual Settlement Class Members are deemed to have received during the relevant time frame (May 25, 2010 through August 31, 2013) will be multiplied by the amount of the Wage Statement Fund and that product will be divided by the total number of relevant wage statements of all Class Members.
- 6.4 Each Settlement Class Member who is no longer employed by a Defendant as of the date of preliminary approval, and who worked for a Defendant during the relevant time (May 25, 2008 through August 31, 2013), will be paid a share of the Waiting Time Penalty Fund for each time his or her employment with Defendants was terminated (i.e. at the end of each season). The total number of terminations for all Class Members shall be

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<sup>1</sup> For the FLSA claim, 10 tour days is stipulated to have been worked for the period June 13, 2009 through June 30, 2009 for those Class Members who were employed at any time during July, 2009.

determined. Thus, the amount payable to a participating Settlement Class Member will be computed by dividing the total number of times the Settlement Class Member had his/her employment terminated divided by the total number of terminations of all Class Members and then multiplying the quotient by the amount allocated to the Waiting Time Penalty Fund.

- 6.5 Payments to Settlement Class Members pursuant to this Settlement Agreement shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, or any other purpose.
- 6.6 Each Settlement Class Member with a verified claim under Labor Code § 2802 will be paid from the Labor Code § 2802 Fund in proportion to the dollar amount of claimed from the fund.
- 6.7 A more precise proposed methodology for the calculations of distribution of the NSA is set forth in document entitled Methodology for Calculation of Settlement Distribution which shall be filed with the Court forthwith.

## 7. Attorneys' Fees.

In consideration for settling this Action and in exchange for the release of all claims by the Class Representatives and the Settlement Classes through the date of final approval of the Settlement, and for all of the work already performed by Class Counsel in this case and all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, administering the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining dismissal of the Action, the Parties agree that Class Counsel may file an application for attorneys' fees in conjunction with the Final Approval Motion. Defendants will not oppose an attorneys' fees award that does not exceed 33 1/3% of the \$1,400,000 GSA, or \$462,000. Should the Court approve a lesser percentage or amount of fees and costs, the unapproved portion or portions shall revert to the NSA and the Funds shall be increased proportionately on a pro rata basis. The Court's approval of any request for attorneys' fees and costs is not a condition to this Settlement Agreement.

Any proceeding relating to the application by Class Counsel for an award for attorneys' fees and costs shall not operate to terminate this Settlement Agreement.

8. Service Fee.

Subject to a request by Class Counsel and approval by the Court, Defendants further agree to pay Allen, Calder, and Sabouri a Service Fee not to exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$7,500) each, for a total of TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$22,500) from the GSA in consideration for serving as Class Representatives. This Service Fee is in addition to the Class Member Payment to which Plaintiffs Allen, Calder, and Sabouri would be entitled along with other Class Members as set forth in this Settlement Agreement. Should the Court approve a Service Fee to Allen, Calder, and Sabouri in an amount less than that set forth herein, the unapproved portion shall revert to the NSA. The Court's approval of any request for a Service Fee is not a condition to this Settlement Agreement. Any proceeding relating to the application by Class Counsel for an award for a Service Fee shall not operate to terminate this Settlement Agreement.

9. Attorneys Costs and Costs of Settlement Administration.

The Parties have selected CPT Group, Inc. to act as Settlement Administrator in this Action. CPT Group, Inc. has agreed to perform all necessary class administration duties. These administration duties shall include, without limitation, calculating the Class Member Payments, mailing the Class Notices, Claim Forms, FLSA Consent Forms, reminder postcards, performing skip traces on Class Notices returned as undeliverable, tracking returned Requests for Exclusion and FLSA Consent Forms, notifying the Parties of timely and untimely submitted FLSA Consent Forms, and mailing the Class Members Payments and tax forms to the Settlement Class Members. All administration costs approved by the Court shall be taken from the GSA.

10. Payment Procedure.

- 10.1 Funding the Settlement. Within ten (10) business days after the Final Effective Date of this Settlement Agreement, Defendants will deposit via wire transfer the Court-approved attorneys' fees and costs, the Class Representatives' Service Fees, and the

Claims Administrator's administration costs into an account, through the Settlement Administrator. As to the portion of the NSA allocated to wages, Defendants will either deposit funds into an account, through the Settlement Administrator, or provide checks to the Settlement Administrator for distribution.

- 10.2 Payments to Settlement Class Members, Class Counsel and Class Representative. Within fifteen (15) business days after Defendants provide the settlement funds, the Settlement Administrator will pay: (1) the NSA to the Settlement Class Members per the terms of this Settlement Agreement and the Final Approval Order; (2) the amount awarded by the Court for attorneys' fees and costs to Class Counsel; (3) the administration costs to the Settlement Administrator; and (4) the Court-approved Service Fee to the Class Representatives.
- 10.3 Uncashed Class Member Payments. If a Class Member Payment check as set forth in Paragraphs 6.1, 6.2, 6.3 and 6.4 is not negotiated within 180 calendar days from the date initially mailed by the Settlement Administrator, the check shall be voided and Defendants will be entitled to retain the sum of the expired check.
- 10.4 The Parties intend that all payments made pursuant to this Settlement Agreement, except for the payment to the Settlement Administrator, are in exchange for release of the Released Claims as set forth in this Settlement Agreement.

## 11. Tax Treatment.

- 11.1 Tax Treatment of the Class Member Payments. Of the amount to be paid to Settlement Class Members, the Parties agree to allocate the payments to wages, interest, and penalties as follows:
  - a. Minimum Wage Payment Fund: 50% will be allocated to wages, 50% to interest.
  - b. Meal and Rest Break Fund: 50% will be allocated to wages, 50% to interest.

- c. Wage Statement Fund: 100% will be allocated to penalties.
- d. Waiting Time Penalty fund: 100% will be allocated to penalties.

Wages shall be subject to legally required withholdings. Separate from, and in addition to, their payment to the GSA, Defendants shall be responsible for paying the employer's share of Social Security taxes and FUTA taxes on any portion of the Settlement that is for wages. Each Settlement Class Member who receives a Class Member Payment will receive an IRS Form W-2 from the Settlement Administrator for the portion of the amount treated as wages and an IRS Form 1099 from the Settlement Administrator for the amount treated as penalties or interest. Each Settlement Class Member who receives a Class Member Payment also will be responsible for correctly characterizing this compensation for tax purposes and for payment of any taxes owing. If an audit of Defendants by any tax authority should dispute the characterization of this compensation, Defendants reserve all rights to indemnification permitted by law.

- 11.2 Tax Treatment of Class Representatives' Service Fees. Plaintiffs will receive an IRS Form 1099 for their individual Service Fees, and will be responsible for correctly characterizing this additional compensation for tax purposes and for payment of any taxes owing on said amount. If an audit of Defendants by any tax authority should dispute the characterization of this compensation, Defendants reserve all rights to indemnification permitted by law.
- 11.3 Neither California Code of Civil Procedure section 384 nor the Doctrine of *Cy Pres* are applicable to this Settlement, because the parties have expressly elected not to create a common fund. Defendants have merely agreed to make a maximum amount available for payment of Class Counsel's attorney fees and costs, administrative expenses, service awards to the Class Representatives and the settlement monies to resolve this action. Any amount left over as unclaimed by the Class

Members, subject to Paragraph 5.2 above, shall remain the property of Defendants.

12. No Impact on Employee Benefit Plan, Policy or Bonus Program.

The amounts paid under this Settlement Agreement shall not affect any credited hours of service under any employee benefit plan, policy or bonus program sponsored by any Defendant. The amounts paid under this Settlement Agreement will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under any Defendant-sponsored (self insured or not) employee benefit plans, policies or bonus programs. Any payments made under the terms of this Settlement Agreement shall not be applied as salary, earnings, wages, or any other form of compensation for the purposes of any employee benefit plan, policy or bonus program. Defendants retain the right to modify the language of their employee benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for the purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement. Neither Defendants nor Plaintiffs are opining on the terms of any such plan, each of which speaks for itself.

13. Severability.

The Settling Parties agree that the provisions of Paragraphs 7, 8, and 9 of this Settlement Agreement are severable from the remainder of the Settlement Agreement. Any denial or reduction in amount by the Court of the application for attorneys’ fees or costs, Class Representatives’ Service Fees, or administrator costs shall in no way affect the validity and effect of the remainder of this Settlement Agreement.

14. Limitation on Costs and Fees.

Except as provided in this Settlement Agreement, Defendants shall not be required to pay any other expenses, costs, damages or fees incurred by the Class Representatives, by any Class Member, or by any of their attorneys, experts, advisors, agents or representatives. Any award of attorneys’ fees, costs, expenses and damages payable hereunder to Class Counsel shall be in complete satisfaction of any and all claims for such

attorneys' fees, costs, expenses and damages, that Class Representatives, the Class, Class Counsel, or any other counsel have or may have against Defendants arising out of or in connection with the Action and its settlement, including, but not limited to, any claims for attorneys' fees, costs and expenses involved in litigating the Action and in negotiating and implementing this Settlement Agreement, including attorneys' fees, costs and expenses incurred through and after the final disposition and termination of the Action. Defendants shall not be responsible for distributing or apportioning any award of attorneys' fees and expenses among Class Counsel, and Class Counsel shall defend, hold harmless, and indemnify Defendants and their counsel, or any of them, from and against any claims, damages, litigation, causes of action, and expenses, including reasonable attorneys' fees, resulting from any action, proceeding, or claim initiated by Class Counsel, or any other attorney, involving the apportionment of the award of attorneys' fees, costs, or expenses among Class Representatives, the Class, and Class Counsel.

15. Persons Objecting to the Settlement or Requesting Exclusion from the Action.

Defendants shall not be responsible to Plaintiff or those Class Members who submit objections to the Settlement Agreement or who submit a Request for Exclusion from the Action, for attorneys' fees, costs, or expenses of any kind.

16. Release.

In exchange for the consideration set forth in this Settlement Agreement, the Class Representatives and the Settlement Class Members agree to release all claims as set forth herein.

- 16.1 Release Provided To Defendants. Upon final approval of this Settlement Agreement, the Releasing Parties hereby forever completely and irrevocably release and discharge Peak DMC North America (formerly known as Suntek Tours, Inc. dba Intrepid SunTrek) and Intrepid Travel Proprietary Limited, and any of their present and former parent companies, subsidiaries, affiliates, related companies, shareholders, owners, including partial owner(s), officers, directors, employees, agents, affiliates, servants, registered representatives, attorneys, insurers, successors and assigns (collectively, with Peak DMC

North America (f.k.a. SunTrek Tours, Inc. dba Intrepid SunTrek) and Intrepid Travel Proprietary Limited, the “Released Parties”), jointly and severally from all claims, known or unknown, under federal or state law, or federal or state regulation that were alleged or that reasonably could have arisen out of the facts alleged in the Actions relating to unpaid wages and overtime, meal and rest periods, wage-statement violations, record-keeping violations, and “waiting time” or other statutory penalties, while working in a Class position during the Class Period. This release shall include, without limitation, any claim under the applicable Wage Order or under California Labor Code sections 201, 202, 203, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194 *et seq.* 1198, 2698 through 2699.5, 2802, under Business and Professions Code section 17200 *et seq.*, or the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* relating to the facts alleged in support of the claims in the Actions, through the time of final approval of the Settlement by the Court. The matters released as provided above in this paragraph are referred to in this Settlement Agreement as the “Released Claims.” *However, the release as to claims under the Fair Labor Standards Act shall only apply to such individuals who have timely filed a Consent to Sue under the Fair Labor Standards Act.*

- 16.2 No Other Liability. The Settlement Agreement shall be in full settlement, compromise, release, and discharge of the Released Claims and the Released Parties shall have no further or other liability to any other Releasing Party with respect to the Released Claims, except as expressly provided herein. The Parties shall agree to an injunction prohibiting all Class Members from participating in any action involving the Released Claims.
- 16.3 Waiver of California Civil Code Section 1542. The Releasing Parties acknowledge that they each may have claims that are presently unknown and that the release contained in this Settlement Agreement is intended to forever discharge all Released Claims, whether now asserted or unasserted, known or unknown, suspected or unsuspected, which if known, might have affected the decision to enter into this release. All

Releasing Parties shall be deemed to waive, as to the Released Claims, any right conferred by any law, that limits a person's release of unknown claims. In making this waiver, all Releasing Parties understand that they may discover facts in addition to or different from those that are currently known or believed to be true with respect to the Released Claims, but agree that it is their intention to forever release any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of additional or different facts. The foregoing waiver includes, without limitation, an express waiver, as to the Released Claims, to the fullest extent permitted by law, any and all rights under California Civil Code section 1542, 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.”**

In addition, the Releasing Parties also expressly waive, as to the Released Claims any right that is similar, comparable, or equivalent to California Civil Code § 1542.

- 16.4 Covenant Not to Sue. To the fullest extent allowed by law, all Releasing Parties, covenant and agree not to ever assert a Released Claim, or to commence, join in, or voluntarily assist in a proceeding against the Released Parties, or any of them, arising out of or regarding the Released Claims.
- 16.5 No Assignment of Rights. Plaintiffs warrant and represent that they have not assigned or transferred any released claim. This warranty of non-assignment shall survive the execution of this Settlement Agreement and the dismissal of this Action. No Class Member Payment shall be paid to any person or entity with respect to whom the Plaintiff as Class Representative has assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, any of the Released Claims or any

rights, claims, or causes of action arising out of the Released Claims.

17. Class Notice and Settlement Administration.

17.1 Engagement of Settlement Administrator. The Parties agree to the selection of CPT Group, Inc. as a Settlement Administrator to perform the notice and other settlement administration functions set forth below.

17.1.1 The Settlement Administrator shall be responsible for:

(a) establishing the necessary bank accounts and obtaining the necessary tax identification number to administer the Settlement; (b) preparing, printing and disseminating the Class Notice, the Claim Form, and FLSA Consent Form to Class Members both via US Mail and e-mail; (c) promptly furnishing to Class Counsel and counsel for Defendants copies of all objections, Requests for Exclusion, and FLSA Consent Forms received; (d) sending a reminder post card to eligible class members (e) distributing a Class Member Payment to each Settlement Class Member; (f) distributing payment for the Service Fee to the Class Representative and the Court-awarded attorneys' fees and costs to Class Counsel; and, (g) distributing the taxes paid by Defendants, filing any necessary tax forms and managing all legally required withholdings.

17.1.2 The Settlement Administrator shall provide Defendants' counsel and Class Counsel with periodic summary reports, including the total number of Class Notices that were returned as undeliverable, the total number of claims, objections, Requests for Exclusion and FLSA Consent Forms. The Settlement Administrator shall maintain records of its work, which shall be available for inspection upon request by Defendants' counsel or Class Counsel.

17.2 Claim Forms FLSA Consent Forms.

17.2.1 Claim Forms: Included with the Class Notice sent to persons believed to be Class Members shall be a pre-printed Claim Form, to be approved by the Court.

17.2.2 FLSA Consent Forms. Included with the Class Notice sent to persons believed to be Collective Class Members shall be a pre-printed FLSA Consent Form, to be approved by the Court.

17.2.3 Availability of Claim Forms and FLSA Consent Forms. Claim Forms and FLSA Consent Forms may be requested by potential Class Members directly from the Settlement Administrator until the Claim Deadline. The Settlement Administrator shall send such forms to potential Class Members within five (5) calendar days of the potential Class Member's request.

17.3 Identification of Class Members.

17.3.1 Defendants have reviewed their reasonably accessible records, including but not limited to electronically searchable records, to identify the Class Members. Defendants have currently identified 493 putative class members.

17.3.2 Within fourteen (14) calendar days of the entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the following information:

- (1) the names, last known addresses, and available e-mail addresses of each Class Member; and
- (2) such other information that the Settlement Administrator reasonably requires to identify Class Members and to support settlement administration.

17.3.3 The Settlement Administrator shall not provide the identification or financial information of Class Members

to anyone other than Class Counsel or Defendants' counsel.

17.3.4 Upon receipt of names and last known addresses of each Class Member, the Settlement Administrator shall access the National Change of Address ("NCOA") Database to update the addresses.

17.3.5 By the Notice Date, the Settlement Administrator shall provide the Class Notice and the FLSA Consent Form by bulk rate first class mail, to the Class Members at the addresses identified through the process described above and via e-mail to the last known e-mail addresses provided by Defendants.

17.3.6 As to any Class Notices that are returned by the Post Office as undeliverable or where the NCOA Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable or not appropriate for receipt of the Class Notice, the Settlement Administrator shall perform one skip-trace procedure. The skip-trace procedure shall be performed within five (5) calendar days of the date on which the Class Notice is returned as undeliverable. If this procedure reveals a new address, the Settlement Administrator shall within five (5) calendar days thereafter re-mail the Class Notice and FLSA Consent Form to the new address.

17.3.7 If Defendants and the Settlement Administrator determine that a person previously identified as being a Class Member should not be so included or identify a person who should have been included as a Class Member but was not so included, Defendants and the Settlement Administrator shall promptly delete or add such person as appropriate and immediately notify Class Counsel prior to such deletions or additions (and the reasons therefor).

17.3.8 The time periods and methodologies set forth herein reflect Defendants' best current belief as to their ability to make such identifications and it is understood that

Defendants, in undertaking the tasks set forth herein, shall use reasonable efforts to identify all Class Members and to determine their last known addresses and e-mail addresses.

17.3.9 Other than the obligations set forth in this Settlement Agreement, Defendants shall have no additional obligation to identify or locate any Class Member or have any liability in connection with the provision of information to the Settlement Administrator or otherwise.

## 18. Objections to the Settlement.

Any Class Member may object to certification of the proposed Classes or to the proposed Settlement Agreement, or any portion thereof (including but not limited to provisional certification, the Service Fee, attorneys' fees, etc.). The Class Notice will provide that Class Members who wish to object to the Settlement must file with the Court and serve on the Settlement Administrator, not later than forty five (45) calendar days after the Notice Date ("Objection Deadline"), a written statement objecting to the Settlement, proposed Class, or any portion thereof, and setting forth the specific grounds for the objection. The statement also will indicate whether the Class Member intends to appear and object to the Settlement at the Final Approval Hearing; the failure to so indicate will constitute a waiver of the right to appear at the hearing. A Class Member who does not file and serve an objection in the manner and by the deadline specified above will be deemed to have waived all objections and will be foreclosed from making any objections to the Settlement, whether by appeal or otherwise. The Settlement Administrator shall send all objections by pdf to counsel for Defendants and Class Counsel.

## 19. Submission of Fully Completed Claim Forms and FLSA Consent Process.

19.1 Deadline for Submission of Claim Forms and FLSA Consent Forms. In order for either a Claim Form or an FLSA opt in to be timely, Class Members must fully complete and execute the Claim Forms and/or the FLSA Consent Forms and return them to the Settlement Administrator so that they are postmarked, e-mailed or faxed on or before the Claims Deadline and FLSA Consent Deadline, i.e. 60 days from the original Notice Date. Defendants shall not have any obligation to provide a payment

from the Minimum Wage Payment Fund to Class Members who do not fully complete and timely return a FLSA Consent Form or Claim Form to the Settlement Administrator in the manner set forth above on or before the Claims Deadline or FLSA Consent Deadline. Nor shall Defendants have any obligation to provide a payment from the Minimum Wage Payment Fund to Class Members who fail to provide fully completed Claims Forms and/or FLSA Consent Forms.

19.2 Receipt and Maintenance of Claim Forms and FLSA Consent Forms. All Claim Forms and FLSA Consent Forms and any accompanying documents received by the Settlement Administrator shall be digitally scanned by the Settlement Administrator. The original FLSA Consent Forms will be filed with the Court to the extent required and the Settlement Administrator shall retain the digital images for future review, if requested, by Defendants' Counsel for a period of 12 months after the payment of the settlement funds.

20. Binding Effect and Right to Request Exclusion.

20.1 Any Class Member may elect to opt out of the Action by filing a written Request for Exclusion from the Settlement to the Settlement Administrator at the address that is set forth in the Class Notice. To be timely, all such Requests for Exclusion must be postmarked no later than sixty (60) calendar days after the Notice Date (the "Exclusion Deadline"). Class Members requesting exclusion must set forth in their Request for Exclusion their full name and current address. A Request for Exclusion must also contain a signed statement in substantially the same form as follows: "Please exclude me from the proposed class in the Allen v. Peak DMC North America, Inc. litigation." The Settlement Administrator shall send all Requests for Exclusion to Defendants' counsel by pdf. A Class Member who fails to comply with the opt-out procedure set forth herein on or before the Exclusion Deadline, as set by the Court, shall not be excluded and shall instead be bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.

- 20.2 Any Class Member who elects to opt out of the Class in the manner and within the time limits specified above and in the Class Notice (1) shall not have any rights under the Settlement Agreement; (2) shall not be entitled to receive any compensation under the Settlement Agreement; (3) shall not have standing to submit any objection to the Settlement Agreement; and (4) shall not be bound by the Settlement Agreement, including all orders issued pursuant thereto.
- 20.3 Except for persons who elect to opt out of the Class in the manner and within the time limits specified above and in the Class Notice, with the sole exception of claims arising under the FLSA, all Class Members shall be deemed to be within the Class for all purposes under this Settlement Agreement, shall be bound by the terms of this Settlement Agreement, and shall be deemed to have waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of this Settlement Agreement.
- 20.4 If the Settlement Agreement is given Final Approval, it shall operate as a complete release of all the Released Claims of Class Members who do not submit timely valid Requests for Exclusion, and as an effective covenant not to sue, except as to the rights, if any, under the FLSA for such persons who did not file a FLSA Consent Form.
- 20.5 Discharge of Obligations. Defendants shall fully discharge their obligations to those Settlement Class Members to whom Defendants pay a Class Member Payment through the Settlement Administrator by mailing a check as set forth in Paragraph 10.2 above, regardless of whether such checks are actually received or negotiated by Settlement Class Members. In the event that such checks are not cashed within one hundred eighty days (180) after the checks are mailed by the Settlement Administrator, such funds shall remain the property of Defendants.
- 20.6 Dispute Resolution Procedure. In any disagreement between a Class Member and Defendants regarding the right to receive a Class Member Payment or the proper computation of time worked for any of the Defendants during the relevant time

periods, the following dispute resolution procedure shall be used: The Class Member shall send a written statement signed under penalty of perjury setting forth all facts supporting the person's claim, any written statements from witnesses supporting the person's claim, and any other supporting evidence to the Settlement Administrator. If the Parties cannot thereafter resolve the disagreement, the Released Parties shall also provide records to the Settlement Administrator. Disputes shall be resolved by the Settlement Administrator, based on a review of the records of the Released Parties and the Class Member's records. The decision of the Settlement Administrator with regard to the amount of the Class Member Payment, if any, that the person is entitled to receive shall be final, non-appealable, and binding on the Class Member and Defendants subject only to the discretion of the Court.

21. Application for Preliminary Approval Order.

Plaintiffs will have moved for preliminary approval of the proposed Settlement. In connection with the Motion, Plaintiffs shall apply for a Preliminary Approval Order that contains the following provisions:

- (1) preliminarily approving the Settlement Agreement under the legal standards relating to the preliminary approval of class and collective action settlements;
- (2) preliminarily certifying the Classes as provided in this Settlement Agreement;
- (3) appointing Paul T. Cullen and The Cullen Law Firm, APC as Class Counsel for the Class;
- (4) appointing Philip Allen, Brian Calder and Tina Sabouri as the representatives of the Classes;
- (5) approving the form of the Class Notice, and finding that the proposed method of disseminating the Class Notice meets the requirements of due process and is the best notice practicable under the circumstances;

- (6) establishing the procedures and the deadline by which Class Members may assert objections to the certification of the Class and/or to the Settlement;
- (7) establishing a deadline for the Parties to submit papers/briefing in response to any objections and in support of Final Approval of the Settlement Agreement.
- (8) establishing procedures and the deadline by which individuals may exclude themselves from the Action;
- (9) setting a date for the Fairness Hearing; and
- (10) providing that, pending this Court's final determination of whether the proposed Settlement will be approved, and to prevent a multiplicity of lawsuits, all members of the Class, and anyone acting on their behalf (including, but not limited to, attorneys, representatives, and agents of any Class Member), who have actual knowledge of this injunction, are barred and enjoined from, commencing or prosecuting, directly or indirectly, any proceeding against any Released Party that asserts a Released Claim that would be released upon Final Approval of the Settlement, except as the Court may further order upon application of a Class Member and notice to all Parties. Any person who violates such injunction shall pay the costs and attorneys' fees incurred by any Released Party as a result of the violation.

## 22. Fairness Hearing.

The Settling Parties shall request that the Court hold the Fairness Hearing not later than seventy five (75) days after the Notice Date. At the Fairness Hearing, the Class Representative and Defendants shall use their best efforts to urge the Court to confirm the certification of the Class, to grant Final Approval of the Settlement in its entirety (including any modification made thereto with the consent of the Settling Parties as provided herein), and to enter a Final Approval Order and Judgment as set forth in Paragraphs 23.1 and 23.2 below.

## 23. Final Approval Order and Judgment.

If the Settlement (including any modification made thereto with the consent of the Settling Parties as provided herein) shall be finally approved by the Court following the Fairness Hearing, the Settling Parties hereto shall jointly request that the Court enter a Final Approval Order and Judgment as follows:

### 23.1 The Final Approval Order shall include the following provisions:

- (1) confirming certification of the Class for settlement purposes and finding that the requirements for class treatment have been met for purposes of the Class;
- (2) finding that the dissemination of the Class Notice in the form and manner ordered by the Court was accomplished as directed, met the requirements of due process, was the best notice practicable under the circumstances, and constituted sufficient notice to all persons entitled thereto;
- (3) finding that the Class Representative and Class Counsel herein have adequately represented the interests of the Class;
- (4) finally approving the Settlement Agreement as fair and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

### 23.2 The Judgment shall include the following provisions:

- (1) directing the Settling Parties to implement the terms of the Settlement Agreement, including the payment to each Settlement Class Member as set forth in this Agreement;
- (2) defining the Class;
- (3) releasing the Released Parties from any liability with respect to the Released Claims as hereinabove provided;
- (4) providing that in order to prevent a multiplicity of lawsuits, and protect and effectuate the Court's judgment

in this Action, the Class Representatives and all Settlement Class Members, and anyone acting on their behalf (including, but not limited to, attorneys, representatives, and agents of Class Representatives or any Settlement Class Member), who have actual knowledge of this injunction, are permanently and forever barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Released Claims under the terms of the Settlement; and providing that any person who violates such injunction shall pay the costs and attorneys' fees incurred by any Released Party as a result of the violation;

- (5) awarding reasonable attorneys' fees and costs to Class Counsel as provided in Paragraph 7, and subject to the limitations set forth therein or in Paragraphs 13 and 14, or reserving jurisdiction with respect thereto;
- (6) awarding the Service Fee to the Class Representative as provided in Paragraph 8, and subject to the limitations set forth therein, or in Paragraph 13, or reserving jurisdiction with respect thereto; and
- (7) reserving exclusive jurisdiction over all matters related to the administration of this Settlement, over the enforcement, construction and interpretation of this Settlement Agreement, over the enforcement, construction, and interpretation of the Judgment, including the provisions therein enjoining any further litigation of Released Claims, and over the Class Representatives and all Settlement Class Members (and their attorneys and law firms) in connection therewith.

24. Conditions of the Settlement.

This Settlement Agreement is subject to and conditioned upon:

- (1) The preliminary approval of the Settlement memorialized in this Settlement Agreement; and
- (2) The final approval of the Settlement by the Court after Court-approved notice to Class Members, the Fairness Hearing, and Judgment having been entered and any appeals resolved.

25. Finality; Effect of the Settlement Not Being Final.

25.1 Finality. The approval of the Settlement shall be considered final on the Final Effective Date. Except as expressly stated herein, none of the obligations of Defendants pursuant to the Settlement Agreement shall become effective until the Settlement becomes final, but Defendants may waive this condition in writing.

25.2 Effect of Settlement Not Being Final. If the Settlement as provided for in this Settlement Agreement does not become final, or does not become effective for any reason other than the failure of any Party to perform such Party's obligations hereunder (except as to the Settlement not becoming final because of any appeal, which circumstance can be waived by Defendants), then the Settlement Agreement shall become null and void and of no further force and effect, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto and their respective predecessors and successors, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and except as otherwise expressly provided herein.

26. Settlement Termination.

This Settlement shall be void, and the Preliminary Approval Order and the Final Approval Order and Judgment shall be vacated upon application to the Court, if (a) the Court declines to enter preliminary approval of the Settlement Agreement or to enter the Judgment or any part

thereof as provided for herein, or the Settling Parties hereto fail to consent to the entry of alternative forms of Judgment, in lieu thereof, or after such consent the Court declines to enter such alternate form of Judgment, or (b) any conditions to the Settlement are not satisfied, or (c) the Court disapproves this Settlement, or any term contained in this Settlement Agreement, except as provided in Paragraph 13, including any amendments hereto, and such disapproval becomes final by reason of its affirmance on appeal or lapse of time or otherwise, or (d) the Court approves this Settlement, including any amendments hereto, but any such judgment and approval is finally reversed on appeal. In such event, (a) this Settlement Agreement and the Settlement shall become void, except for the obligation of Plaintiffs and Defendants to pay on a 50-50 basis, any expense incurred in connection with the Notice and administration of the Settlement, but as to these expenses, the party prevailing in the litigation may recover them as costs; (b) any actions taken in connection with this Settlement Agreement and the Settlement shall become null and void and of no effect, (c) this Settlement Agreement and the Settlement and any hearings or proceedings thereunder shall not be referred to or used as evidence for or against any party or Class Member in this or any other action or proceeding, and (d) all pre-trial proceedings, including discovery, shall resume thirty (30) calendar days thereafter as if this Settlement had not been proposed for approval of the Court. If any monies for attorneys' fees, costs, and expenses have been paid to Class Counsel or any monies for a service fee has been paid to the Class Representative, then Class Counsel and the Class Representatives agree to return such monies within ten (10) calendar days. If reimbursement is not made within ten (10) calendar days by the Class Representatives, Class Counsel shall be required to reimburse any amounts owed by the Class Representatives to Defendants within five (5) calendar days.

## 27. Effect Of Opt-Outs Of 10 Percent Or More

Notwithstanding any other provision of this Settlement Agreement, Defendants shall retain the right, in their sole discretion, to nullify the Settlement within fifteen (15) business days after expiration of the opt-out period set forth in Paragraph 20.1, if ten percent (10%) or more of Class Members choose to opt out of this Settlement. If Peak DMC North America (f.k.a. SunTrek Tours, Inc. dba Intrepid SunTrek) and/or Intrepid Travel Proprietary Limited exercise such an option to withdraw, a written notice of such withdrawal and the grounds therefore shall be promptly delivered to Class Counsel. As a result of any such withdrawal, this Settlement

Agreement shall become void except for the obligation of Defendants to pay for any expense incurred in connection with the Notice and administration of the Settlement before Defendants withdraw from the Settlement.

28. No Admissions.

The Settling Parties agree that this Settlement Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Settlement Agreement may be offered as an admission of any kind. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Peak DMC North America, SunTrek Tours, Inc. dba Intrepid SunTrek, and Intrepid Travel Proprietary Limited, and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the Class Representative or any Class Member has suffered any damage. In addition, this Settlement Agreement shall not be offered or be admissible in evidence against Peak DMC North America, SunTrek Tours, Inc. dba Intrepid SunTrek, and Intrepid Travel Proprietary Limited, or any Released Party, except in any action or proceeding brought by or against Class Representative, the Class, Class Members, or Peak DMC North America, SunTrek Tours, Inc. dba Intrepid SunTrek, or Intrepid Travel Proprietary Limited to enforce its terms, or by Peak DMC North America, SunTrek Tours, Inc. dba Intrepid SunTrek, and/or Intrepid Travel Proprietary Limited in defense of any claims brought by Class Representatives, the Class, Class Members, or any member of the general public. The provisions of this paragraph shall become effective when this Settlement Agreement is signed and shall be binding on the Settling Parties and their counsel regardless of whether the Settlement Agreement is preliminarily or finally approved or terminated for any reason, or rendered null and void.

29. Publicity:

The Parties herein agree that nothing in this Settlement Agreement shall restrict Class Counsel or the Class Representatives from utilizing social media and posting information regarding the settlement on the Internet in an effort to ensure that all putative class members receive actual notice of this Settlement. Any information posted by Class Counsel or the Class Representatives in their representative capacities, rather than as personal postings, shall also be transmitted to Defendants' counsel.

30. Extensions of Time.

Without further order of the Court, the Settling Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

31. Force Majeure.

The failure of any party to perform any obligation hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, earthquakes, other natural disasters, explosions, floods, wars, sabotage, or terrorist acts beyond the reasonable control of such party.

32. Construction.

This Settlement Agreement was entered into after substantial good faith, arm's-length negotiations between the Settling Parties' counsel. This Settlement Agreement is entered into freely and voluntarily only after each party has carefully read and reviewed it with counsel, and it reflects the conclusion of each party that this Settlement Agreement and the Judgment and the releases, waivers, and covenants contemplated hereby are in the best interest of said party. This Settlement Agreement has been entered into without any coercion and under no duress. The Settling Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one party or another. All Parties waive the provisions of California Civil Code section 1654, which provides, in pertinent part, that "the language of a contract should be interpreted most strongly against the party who causes the uncertainty to exist." Except as expressly provided herein, this Settlement Agreement is not intended to confer any rights or remedies upon any person other than the Settling Parties.

33. Due Authority of Attorneys.

Each of the attorneys executing this Settlement Agreement on behalf of one or more parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Settlement Agreement on behalf of each such respective party and to bind them to the terms hereof.

34. Entire Agreement.

This Settlement Agreement (including all Exhibits annexed hereto) sets forth the entire agreement of the Settling Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Settling Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Settling Parties or by anyone acting on behalf of the Settling Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement, shall be valid or binding.

35. Modification or Amendment.

This Settlement Agreement may not be modified or amended except in a writing signed by all signatories hereto or his or her successors in interest.

36. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

37. Successors.

This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties hereto (including Settlement Class Members) and their respective heirs, executors, administrators, successors and assigns, and upon any corporation, partnership or other entity into or with which any Settling Party hereto may merge, combine or consolidate. As used in the preceding sentence and elsewhere throughout this Settlement Agreement, “including” shall mean including without limitation.

38. Counterparts.

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute

one and the same instrument. Facsimile or other electronic transmission of the signatures of the Settling Parties or their representatives shall be binding on the Settling Parties.

39. Waivers.

The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

40. Governing Law.

This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California, without regard for the law of the State of California regarding conflicts of laws or choice of law. Any orders or judgments entered by the Court in conjunction with the proceedings relating to or arising out of this Settlement Agreement shall be construed and enforced under, and all issues relating to the preclusive effect of such orders or judgments shall be determined by, the laws of the State of California relating to the construction, enforcement, and preclusive effect of orders and judgments entered by state courts.

41. Continuing Jurisdiction.

To the extent allowed by law, the Court will have continuing jurisdiction over the Action for the purpose of implementing the Settlement Agreement, the Final Approval of the Settlement, entry of Judgment, and post-judgment issues, until all related matters are fully resolved. Except as provided in Paragraph 20.6, above, any dispute regarding the Settling Parties' obligations pursuant to this Settlement Agreement or interpretation of the terms of this Settlement Agreement will be presented by written motion to, and resolved by, the Court. Moreover, for limited purposes of enforcement only, to the extent necessary, the parties stipulate to the jurisdiction of the United States District Court for the Central District of California and/or the Los Angeles Superior Court but otherwise are protected by stipulations, special appearances, or other pleadings filed in each case. To the extent any party is required to seek enforcement of the terms of this Settlement Agreement, reasonable attorney fees and costs shall be awarded to the prevailing party.

42. Regulation.

In the event that any provision in this Settlement Agreement shall be affected by any rule, regulation, ordinance, order, directive, or statute by any unit of government, whether state, federal, or local, such rule, regulation, ordinance, order, directive, or statute shall supersede and take precedence over any such provision of this Settlement Agreement to the contrary and in no event shall Defendants or any of them be in violation of this Settlement Agreement nor shall this Settlement Agreement be in any way affected should Defendants or any of them take any action or change any of their business practices to comply with such state, federal, or local rules, regulations, ordinances, or statutes currently in force or enacted in the future.

43. Headings.

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and shall not be given weight in its construction.

44. No Rescission On Grounds Of Mistake.

The Settling Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Settling Parties agree that they shall not seek to set aside any part of the Settlement Agreement on the grounds of mistake. Moreover, the Settling Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

45. Notices.

45.1 Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than notice to the Class or Class Members, shall be in writing and, except as provided elsewhere in this Settlement Agreement or in any communication to the Class, shall be delivered personally, via overnight delivery or via postage pre-paid first class mail, as follows: (1) to Class

Representative, the Class, and Class Counsel to the attention of Paul Cullen, The Cullen Law Firm APC, 19360 Rinaldi Street, Box 647; Porter Ranch, CA 91326-1607 and (2) to Peak DMC North America, SunTrek Tours, Inc. dba Intrepid SunTrek, and Intrepid Travel Proprietary Limited and counsel for Defendants to the attention of Joseph D. Miller, Miller and Mann LLP, 1 Embarcadero Center, Suite 4100, San Francisco, CA 94111 and to Holly Hempel, Nelson Mullins Riley & Scarborough LLP Atlantic Station 201 17th Street, NW Suite 1700 Atlanta, GA 30363. By written notice given in accordance herewith, each party may modify or change address of any person identified above or pursuant hereto as the person or persons to whom all future notices shall be sent.

46. Signatures of Class Representative, Defendants and Class Counsel.

Class Representatives, Defendants, and Class Counsel indicate by signing below their approval of the form of this Settlement Agreement (and exhibits thereto), and, in the case of counsel for Class Representatives and the Class, a representation of authority to bind the Class as certified and the Class described herein (subject to the final approval of the Court). Such signature by a representative of or counsel for ITPL shall not be used or considered in any future determination as to whether California has jurisdiction over ITPL or any of its related entities or persons.

47. Disputes.

All disputes arising out of or related to this Settlement Agreement (except Class Member disputes which are governed by the provision of

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Paragraph 20.6) shall be resolved by the Court, as set forth in Paragraph 41, above.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by Philip Allen, Brian Calder, and Tina Sabouri on behalf of the Settling Parties, as follows:

Dated: January \_\_\_\_, 2014

By: \_\_\_\_\_

Tina Sabouri

On behalf of herself, as Plaintiff, and those similarly situated

Dated: January \_\_\_\_, 2014

By: \_\_\_\_\_

Philip Allen

On behalf of himself, as Plaintiff, and those similarly situated

Dated: January \_\_\_\_, 2014

By: \_\_\_\_\_

Brian Calder

On behalf of himself, as Plaintiff, and those similarly situated

THE CULLEN LAW FIRM, APC

Dated: January \_\_\_\_, 2014

By: \_\_\_\_\_

Paul T. Cullen  
Class Counsel

///

Paragraph 20.6) shall be resolved by the Court, as set forth in Paragraph 41, above.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by Philip Allen, Brian Calder, and Tina Sabouri on behalf of the Settling Parties, as follows:

Dated: January \_\_, 2014

By: \_\_\_\_\_

Tina Sabouri

On behalf of herself, as Plaintiff, and those similarly situated

Dated: January 16, 2014

By:  \_\_\_\_\_

Philip Allen

On behalf of himself, as Plaintiff, and those similarly situated

Dated: January \_\_, 2014

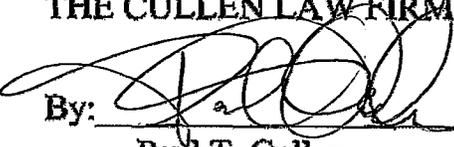
By: \_\_\_\_\_

Brian Calder

On behalf of himself, as Plaintiff, and those similarly situated

THE CULLEN LAW FIRM, APC

Dated: January 16, 2014

By:  \_\_\_\_\_

Paul T. Cullen

Class Counsel

///

Paragraph 20.6) shall be resolved by the Court, as set forth in Paragraph 41, above.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by Philip Allen, Brian Calder, and Tina Sabouri on behalf of the Settling Parties, as follows:

Dated: January 16, 2014

By: Tina Sabouri  
Tina Sabouri *per Paul T. Cullen per express authorization*  
On behalf of herself, as Plaintiff, and those similarly situated

Dated: January 16, 2014

By: Philip Allen  
Philip Allen  
On behalf of himself, as Plaintiff, and those similarly situated

Dated: January    , 2014

By: \_\_\_\_\_  
Brian Calder  
On behalf of himself, as Plaintiff, and those similarly situated

THE CULLEN LAW FIRM, APC

Dated: January 16, 2014

By: Paul T. Cullen  
Paul T. Cullen  
Class Counsel

///

Paragraph 20.6) shall be resolved by the Court, as set forth in Paragraph 41, above.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by Philip Allen, Brian Calder, and Tina Sabouri on behalf of the Settling Parties, as follows:

Dated: January \_\_, 2014

By: \_\_\_\_\_

Tina Sabouri

On behalf of herself, as Plaintiff, and those similarly situated

Dated: January \_\_, 2014

By: \_\_\_\_\_

Philip Allen

On behalf of himself, as Plaintiff, and those similarly situated

Dated: January 17, 2014

By: Brian Calder

Brian Calder

On behalf of himself, as Plaintiff, and those similarly situated

THE CULLEN LAW FIRM, APC

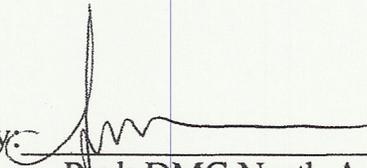
Dated: January \_\_, 2014

By: \_\_\_\_\_

Paul T. Cullen  
Class Counsel

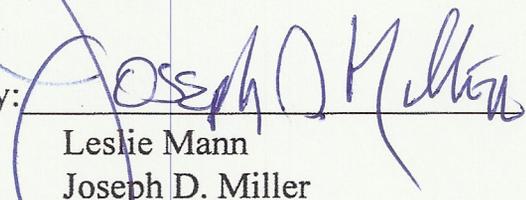
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Dated: January 14, 2014

By:  m BERNA  
Peak DMC North America, Inc. f.k.a.  
SunTrek Tours, Inc., dba Intrepid  
SunTrek

Miller & Mann

Dated: January 15, 2014

By:   
Leslie Mann  
Joseph D. Miller  
Attorneys for Peak DMC North  
America, Inc. f.k.a. SunTrek Tours,  
Inc., dba Intrepid SunTrek

Dated: January \_\_, 2014

By: \_\_\_\_\_  
Intrepid Travel Proprietary  
Limited

Dated: January \_\_, 2014

Nelson Mullins Riley & Scarborough LLP

By: \_\_\_\_\_  
Holly Hempel, Pro Hac Vice  
Attorneys for Specially Appearing  
Defendant Intrepid Travel  
Proprietary Limited

Dated: January \_\_, 2014

By: \_\_\_\_\_  
Peak DMC North America, Inc. f.k.a.  
SunTrek Tours, Inc., dba Intrepid  
SunTrek

Miller & Mann

Dated: January \_\_, 2014

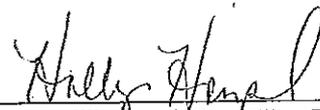
By: \_\_\_\_\_  
Leslie Mann  
Joseph D. Miller  
Attorneys for Peak DMC North  
America, Inc. f.k.a. SunTrek Tours,  
Inc., dba Intrepid SunTrek

Dated: January 16, 2014

By:  \_\_\_\_\_  
Intrepid Travel Proprietary  
Limited

Dated: January 15, 2014

Nelson Mullins Riley & Scarborough LLP

By:  \_\_\_\_\_  
Holly Hempel, Pro Hac Vice  
Attorneys for Specially Appearing  
Defendant Intrepid Travel  
Proprietary Limited

# **EXHIBIT “A”**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

**IMPORTANT COURT NOTICE  
PLEASE READ CAREFULLY**

**THIS IS NOTICE OF A COURT-APPROVED  
PROPOSED CLASS AND COLLECTIVE ACTION SETTLEMENT**

**To: All employees of PEAK DMC NORTH AMERICA (formerly known as SUNTREK TOURS, INC.), INTREPID SUNTREK, and/or INTREPID TRAVEL PROPRIETARY LTD. who worked as Group Leaders (also known as Trip Leaders, Tour Guides, Tour Leaders, and/or Group Leader trainees) in the United States during the time period from May 25, 2007 to August 31, 2013.**

**YOU MAY RECEIVE MONEY AS A RESULT OF A CLASS ACTION SETTLEMENT**

**WHY IS THIS NOTICE BEING SENT TO YOU?**

1. This Notice is to inform you that a proposed settlement in *Philip Allen et al. v. Peak DMC North America, et al.*, Case No. BC462363 (the “Lawsuit”), has been reached by the parties to the Lawsuit and the settlement has been granted preliminary approval by the Los Angeles Superior Court, Honorable Mary H. Strobel, Dept. 32 presiding.
2. This is **not** a notice of a lawsuit against you. **You are not being sued.** If you are a current employee of Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, or Intrepid Travel Proprietary Ltd., your participation in the settlement shall not affect your employment with Peak DMC North America, Intrepid Suntrek, or Intrepid Travel Proprietary Ltd. in any way.
3. The Court has ordered this Notice be sent to you because you may be a Class Member in the Lawsuit and to inform you of the proposed settlement of the Lawsuit. The Notice is also intended (1) to describe how the settlement may affect you, including how the Settlement Fund is to be distributed; and (2) to advise you of your rights and options with respect to the settlement.

**WHY YOU SHOULD READ THIS NOTICE**

4. You should read this Notice because you may be entitled to receive money under this settlement.

**WHAT IS A CLASS ACTION?**

5. A class action is a lawsuit brought in a single court proceeding by one or more representative plaintiffs,

also known as “class representatives,” who assert claims and rights on behalf of other similarly-situated people.

## **SUMMARY OF THE CLAIMS AND ALLEGATIONS**

6. Plaintiffs/Class Representatives Philip Allen, Brian Calder, and Tina Sabouri filed the Lawsuit against Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, and Intrepid Travel Proprietary Ltd., [hereinafter known as “Defendants”] alleging that they and all members of the class described above are entitled to recover money damages and penalties (primarily for unpaid for missed meal and rest breaks, and for other claims as well). Specifically, the currently operative Third Amended Complaint for damages and other relief is fashioned as a proposed California Class Action and a proposed FLSA Collective Action. It contains the following causes of action: (1.) Recovery of Unpaid Minimum Wages (LC Section 1194); (2.) Recovery of Unpaid Overtime Wages (LC Section 1194); (3.) Failure to Provide Meal Periods (LC Section 226.7); (4.) Failure to Provide Rest Periods (LC Section 226.7); (5.) Failure to Timely Furnish Accurate Itemized Wage Statements (Labor Code Section 226 (A)); (6.) Violations of Labor Code Section 203; (7.) Unfair Business Practices (B&PC §17,200 et seq.); (8) Violation of Labor Code section 2802 and (9.) Failure to Pay Minimum and Overtime Wages (Fair Labor Standards Act, 29 U.S.C. 206 and 216. Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, and Intrepid Travel Proprietary Ltd. vigorously deny the allegations and claims in the Lawsuit.

## **WHO IS ELIGIBLE TO RECEIVE MONEY UNDER THIS SETTLEMENT?**

7. This settlement applies only to current and/or former employees of Peak DMC North America (formerly known as SunTrek Tours, Inc.), Intrepid Suntrek, or Intrepid Travel Proprietary Ltd. who are in any of the following categories (“Class Members”):

Group Leaders (also known as Trip Leaders, Tour Guides, Tour Leaders, and/or Group Leader trainees) [hereinafter “Class Position”] who worked for Defendants in the United States anytime during the time period from May 25, 2007 to August 31, 2013.

## **THE COURT HAS GRANTED PRELIMINARY APPROVAL TO THE SETTLEMENT**

8. On \_\_\_\_\_, the Court granted preliminary approval to a settlement of the Lawsuit. The Court has made no opinion on the merits of the Lawsuit and has only given preliminary approval to the settlement of the Lawsuit.

## **SUMMARY OF THE SETTLEMENT AGREEMENT**

9. The description below is a summary of the material terms of the proposed settlement. You may obtain more information about the proposed settlement by contacting Class Counsel at the address listed below.

10. Settlement Fund. Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek,

and Intrepid Travel Proprietary Ltd., and the Plaintiffs/Class Representatives have agreed that, in order to fully and finally resolve the Lawsuit, Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, and Intrepid Travel Proprietary Ltd. will pay a maximum of One Million Four Hundred Thousand Dollars (\$1,400,000) (“Gross Settlement Amount” or “GSA”) in exchange for each Class Member releasing claims against them. After deducting from the GSA a payment to the Claims Administrator for administering and processing this settlement and a payment reimbursing Class Counsel for expenses fronted by them on behalf of the class (which collectively will not to exceed \$61,500), a service fee to be approved by the Court to the Plaintiffs/Class Representatives for their activities as plaintiffs (not to exceed \$7,500 each, or \$22,500 total), and Class Counsel’s attorney’s fees and costs (not to exceed \$462,000) to be approved by the Court, the amount left or the Net Settlement Amount (“NSA”) up to \$854,000 may be distributed with a guaranteed payout of \$470,000.00 to Class Members who have not timely excluded themselves from participating in the settlement.

Individual settlement payments to Settlement Class Members shall be paid from the NSA based on several formulas that will provide a fixed payment, less applicable state and federal withholding taxes, applicable payroll deductions, other deductions required by state and local law and social security withholdings, based on the number of days worked by each Class Member as explained in Paragraph 11 below.

#### 11. Payment Formula.

After the NSA is established after deducting the administrative costs, a service fee to the Plaintiff, Class Counsel’s attorney’s fees and costs from the Settlement Fund, the remaining individual settlement payment for each Class Member will be determined as follows:

The NSA shall be divided into the following funds, the amounts of which shall be as follows: (i) \$7,500 will be deducted from the NSA and allocated specifically for repayment of allegedly unlawful deductions taken from paychecks for items such as insurance deductibles. Thereafter the remaining balance of the NSA (i.e. remaining NSA) shall be divided with approximately (ii) 48.7% of the remaining portion of the NSA constituting the Minimum Wage Payment Fund (which includes training pay), (iii) 12.4% of the remaining NSA constituting the Meal and Rest Break Fund, (iv) 14.6% of the remaining NSA constituting the Wage Statement Fund, and (v) 24.3% of the remaining NSA constituting the Waiting Time Penalty Fund. These percentages are approximate.<sup>1</sup>

(1) Each Settlement Class Member will be paid from the Minimum Wage Payment Fund a portion of the NSA based on training days and for Tour Days worked or deemed<sup>2</sup> to have been worked in California for the relevant time frame (May 25, 2007 through August 31, 2013) and each Settlement Class Member who opts into the FLSA claim in this Action will be paid from the Minimum Wage Payment Fund a portion of the NSA in accordance with the individual Settlement Class Member’s Tour days worked or deemed to have been worked outside of California for the relevant time frame (June 13, 2009 through August 31, 2013). **To receive credit for days worked outside of California, Class Members must complete a FLSA Consent Form and opt into the FLSA portion of the settlement.** 24% of the Minimum Wage Fund is allocated to payments for

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<sup>1</sup> The term approximate is due to the fact that the numbers have been rounded to the nearest tenth of a percent.

<sup>2</sup> The parties to the litigation agree that, due to a lack of verifiable business records between May 2007 and June 2009 (when Suntrek was a predecessor company), a certain number of Tour Days and training days were worked by members of the class. The precise details as to the numbers of days the parties agreed were worked by class members during the various years are set forth in the detailed settlement agreement and other documents on file with the court herein.

days spent in training, and Settlement Class Members will be paid for training days based on the number of days they spent in training or are deemed to have spent in training.

(2) Each Settlement Class Member will be paid from the Meal and Rest Break Fund a portion of the NSA on a pro rata basis in accordance with the individual Settlement Class Member's days worked as compared to the total number of days worked by all class members during the relevant time frame of May 25, 2007 to August 31, 2013.

(3) Each Settlement Class Member will be paid from the Wage Statement Fund a portion of the NSA on a pro rata basis based on the following formula: Each Class Member will be deemed to have received a wage statement for 15 Tour Days during which they were employed in a Class position. Thereafter, the product of the number of the individual Settlement Class Member's weekly wage statements during the relevant time frame (May 25, 2010 to August 31, 2013) will be multiplied by the amount of the fund divided by the total number of all class members' wage statements.

(4) Each Settlement Class Member who is no longer employed by Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, or Intrepid Travel Proprietary Ltd. as of the date of preliminary approval, and who worked for Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, or Intrepid Travel Proprietary Ltd. during the relevant time frame (May 25, 2008 to August 31, 2013), will be paid a pro-rata share of the Waiting Time Penalty Fund based on the total number of times the Settlement Class Members' employment with Defendants was terminated as compared to the total number of all Class Members terminated between May 25, 2008 to August 31, 2013.

For tax reporting purposes, the Parties have agreed that the amount paid to each Class Member shall be treated as follows:

- (1) Minimum Wage Payment Fund: 50% will be allocated to wages, 50% to interest.
- (2) Meal and Rest Break Fund: 50% will be allocated to wages, 50% to interest.
- (3) Wage Statement Fund: 100% will be allocated to penalties.
- (4) Waiting Time Penalty fund: 100% will be allocated to penalties.

However, neither the Parties nor the claims administrator can give you tax advice regarding this matter, and you are responsible for determining the correct payment of any taxes due under the settlement. It is recommended that you consult a tax advisor regarding this matter.

12. Attorneys' Fees for Class Counsel: Class Counsel will be paid from the Settlement Fund. Class Counsel will not ask for attorneys' fees and costs exceeding 33 1/3% (\$462,000) of the Settlement Fund. The actual amount awarded will be determined by the Court to ensure the amount of attorneys' fees and costs awarded are reasonable. This means that Class Members will not have to directly pay anything to Class Counsel.

## **HOW MUCH MONEY CAN YOU RECEIVE UNDER THIS SETTLEMENT?**

13. According to Defendant PEAK DMC North America's (also known as Intrepid SunTrek and formerly known as Suntrek Tours, Inc.) records, you are a member of the settlement class in the proposed settlement that is before the Los Angeles Superior Court, LASC Case Number BC462363 and therefore eligible to submit a claim for monetary payment. According to Defendant PEAK DMC's records, during the Class Period of May 25, 2007 through August 31, 2013, you either worked or are deemed to have worked \_\_\_ Tour Days in California. The proposed settlement allocates on average<sup>3</sup> \$\_\_\_\_\_ per Tour Day worked in California (not including days worked while in training) for each participating class member. According to Defendant PEAK DMC's records, during the Class Period of May 25, 2007 through August 31, 2013, you also either spent or are deemed to have spent \_\_\_ days in training in California. The proposed Settlement allocates on average \$\_\_\_\_\_ per each day of training in California for each participating class member. Thus, if you submit a claim, your share of the proposed settlement for all claims based on California law, including claims for alleged nonpayment of minimum wages under California law, the provision of allegedly noncompliant wage statements, and waiting time penalties would be approximately \$\_\_\_\_\_.

However, because Group Leaders typically spend most of their time working outside of California, a substantial portion of the Settlement proceeds are allocated to claims for unpaid wages for work performed outside of the State of California. To receive additional money for days you worked for any of the Defendants during the time period of June 13, 2009 through August 31, 2013 outside of California, but within the United States, you also must fully complete, sign and submit to the Claims Administrator the form titled CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT, enclosed herewith, to compensate you for releasing claims you may have pursuant to the Federal Fair Labor Standards Act, 29 U.S.C. §§ 206 *et seq.* ("FLSA"). According to Defendant PEAK DMC's records, during the Collective Class Period June 13, 2009 through August 31, 2013, you worked \_\_\_\_\_ Tour Days outside of California. The proposed Settlement provides on average \$ \_\_ per Tour Day worked outside of California between June 13, 2009 and August 31, 2013; thus, if you complete and submit the form entitled CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT, in addition to the estimated payment of \$ \_\_\_\_ for your potential claims based on California law, you will also receive an estimated payment of \$ \_\_\_\_\_ for your potential claims under the FLSA.

The precise amount of money that you may be eligible to receive is not yet determined, but will depend upon a host of factors, including, but not limited to how long you worked for the Defendants, when you worked for the Defendants, the number of Class Members who participate in the settlement and the amounts the Court approves for the service fees to the Class Representatives and the attorneys' fees for Class Counsel.

## **EFFECT OF THE SETTLEMENT - RELEASE OF ALL CLAIMS**

14. Release of Claims: Upon the final approval by the Court of this proposed settlement, and except as to such rights or claims as may be created by this proposed settlement, the Class Members (other than those who file a Request for Exclusion) release and discharge Peak DMC North America (formerly known as Suntrek

<sup>3</sup> The word "average" is used here and throughout this notice, since the amount of pay varied from year to year. The amount paid in settlement varies from year to year in proportion to the historical changes in wages paid.

Tours, Inc.), Intrepid Suntek, and Intrepid Travel Proprietary Ltd., jointly and severally, and any of their present and former parent companies, subsidiaries, shareholders, officers, owners directors, employees, agents, affiliates, servants, registered representatives, attorneys, insurers, successors and assigns, from all claims, known or unknown, under federal or state law, that were alleged or that reasonably could have arisen out of the facts alleged in this Lawsuit relating to unpaid wages and overtime, denial of meal and rest breaks, wage-statement violations, record-keeping violations, and “waiting time” or other statutory penalties, while working in a Class position during the Class Period. This release shall include, without limitation, any claim under the applicable Wage Order or under California Labor Code sections 201, 202, 203, 218.6, 226, 226.3 226.7, 510, 512, 558, 1194 *et seq.*, 1198, 2698 through 2699.5, 2802, or under Business and Professions Code section 17200 *et seq.* Moreover, Class Members who complete the FLSA Consent Form release any and all claims that relate to or arise out of those asserted in the Lawsuit which could have been brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* up to and including the date of the final court approval of the settlement.

15. Conditions of the Settlement. This settlement is conditioned upon the Court entering an order granting final approval to the settlement as being fair, reasonable, adequate, and in the best interests of the Settlement Class.

<p style="text-align: center;"><b>WHAT YOU NEED TO DO IF YOU WANT TO RECEIVE MONEY UNDER THIS SETTLEMENT</b></p>
--

16. **Any Class Member who wishes to receive the full amount of payment he or she may be eligible for under the settlement should return and fully complete both the Claim Form and the FLSA Consent Form included with this Notice.** Class Members who do not complete and send in Claim Form and the FLSA Consent Form postmarked by \_\_\_\_\_ to the Claims Administrator, CPT Group, Inc., at the address below **will receive a settlement payment that is very likely less than the amount they would otherwise receive.** Your settlement payment will be mailed to you by the Claims Administrator following the Court granting final approval of the settlement.

17. If you have questions about the settlement, you may contact the Claims Administrator or Class Counsel. The Claims Administrator’s contact information is:

\_\_\_\_\_  
<ADDRESS INFO TO BE ADDED>

18. If you are a Class Member and you want to receive money under this settlement, you will be bound by all of the provisions of the Settlement Agreement agreed to by the parties to the Lawsuit and preliminarily approved by the Court, including a release of all your claims that will prevent you from separately suing on your own behalf. Your settlement payment check must be cashed within one hundred eighty days (180) after it is issued. **A copy of the Settlement Agreement can be viewed on Class Counsel's, i.e. The Cullen Law Firm’s website, [www.CullenLegal.com](http://www.CullenLegal.com).**

**WHAT HAPPENS IF YOU DO NOTHING IN RESPONSE TO THIS NOTICE?**

19. If a Class Member does nothing in response to this Notice, the Class Member will NOT receive a settlement payment and will be bound by all the terms of the settlement with respect to all claims asserted under state law. Therefore, the Class Member will not have the right to separately pursue any state law claims covered by this settlement if he/she does nothing.

**WHAT SHOULD YOU DO IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT AND/OR WANT TO PURSUE YOUR OWN CLAIMS SEPARATELY FROM THIS CLASS ACTION LAWSUIT?**

20. Class Members who do not want to participate in the settlement and/or want to pursue any individual claims separately from the Lawsuit must “opt out” of the settlement. Class Members may opt out of the settlement by mailing a Request for Exclusion from the settlement to the Claims Administrator at the address listed in paragraph 17 above on or before \_\_\_\_\_. Your written Request for Exclusion from the settlement must contain your name, address, telephone number and the last four digits of your Social Security Number and contain the signed statement in substantially the same form as follows: “Please exclude me from the proposed class in the Allen v. Peak DMC North America litigation.” The Request for Exclusion from the settlement must be signed by you and returned by mail to the Claims Administrator and postmarked on or before \_\_\_\_\_.

21. If you choose to be excluded from this settlement, you will not receive any money as a result of the settlement and will not have any right to object to the settlement. All Requests for Exclusion that do not contain all the information set forth in Paragraph 20 or that are postmarked after \_\_\_\_\_ will be disregarded. If you submit a late Request for Exclusion from the settlement, you will not be able to pursue any individual state law claims you may have separately from the Lawsuit.

**WHAT SHOULD YOU DO IF YOU OBJECT TO THE SETTLEMENT?**

22. **IF YOU HAVE AN OBJECTION TO ANY OF THE TERMS OF THE SETTLEMENT**, and have not submitted a Request for Exclusion, you can submit a written objection to the settlement. However, if the Court ultimately approves the settlement, you will still be bound by the terms of the settlement. You may both object to the settlement and receive money under this settlement if it is later finally approved by the Court.

23. To object to the settlement, you must file a written objection by \_\_\_\_\_ with the Court, located at 111 N. Hill St., Los Angeles, CA 90012, and mail copies of your objection by certified mail at the same time to all of the attorneys listed in paragraphs 29, 30, and 31, below. Your objection should clearly explain why you object to the settlement, state each specific reason in support of your objection and any legal support for each objection and must state whether you (or an attorney on your behalf) intends to appear in Court on \_\_\_\_\_ at \_\_\_\_ a.m., at which time the Court will address all objections and decide whether to grant final approval to the settlement. Your objection must also state your full name, address and the dates and position of your

employment with Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, and/or Intrepid Travel Proprietary Ltd. **DO NOT TELEPHONE THE COURT.**

24. If you object to the settlement, you will remain a member of the Class and if the Court approves the settlement, you will be bound by the terms of the settlement in the same way and to the same extent as a Class Member who did not object to the settlement. Any member of the Class who does not timely file a written objection to the settlement in the manner provided above shall be deemed to have waived all such objections and shall be foreclosed from objecting (by appeal or otherwise) to the proposed settlement. Any Class Member who does not object to the proposed settlement does not need to appear at the final approval settlement hearing before the Court.

## FINAL SETTLEMENT APPROVAL HEARING

25. The final approval hearing to be conducted by the Court to address the adequacy, reasonableness and fairness of the proposed settlement will be held on \_\_\_\_\_ at \_\_\_\_ a.m. in Department 32 of the Los Angeles Superior Court located at 111 N. Hill St., Los Angeles, CA 90012. The final approval settlement hearing may be continued without further notice to you, and you are responsible for verifying the date of the final approval hearing if you wish to attend. **You are not required to attend the final approval hearing or file an objection to the proposed settlement but you may do either or both.** You may also appear at the final approval settlement hearing through your own attorney, if you desire, as explained in paragraph 23 above.

26. Any Class Member who does not validly and timely object in the manner provided above shall be deemed to have consented to the settlement, waived any and all objections thereto and forever foreclosed from making any objections (by appeal or otherwise) to the proposed settlement.

## NO RETALIATION

27. The law prohibits Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, and Intrepid Travel Proprietary Ltd. from retaliating against an employee who exercises his/her rights regarding this proposed settlement. Peak DMC North America (formerly known as Suntrek Tours, Inc.), Intrepid Suntrek, and Intrepid Travel Proprietary Ltd. have agreed they will not contact Class Members for the purpose of attempting to influence them to participate, or not to participate, in this settlement, will not take any adverse employment action, retaliate or discriminate against any Class Member who elects or indicates an intention to participate, or not to participate, in this settlement, and will not disclose the identities of any Class Member who elects or declines to participate in this settlement to any supervisory personnel employed by them, except as necessary to administer the settlement in good faith or for other reasonable business purposes.

## WHAT TO DO IF YOU NEED ADDITIONAL INFORMATION

28. This Notice only summarizes this Lawsuit, the proposed settlement and related matters. For more information or if you have any questions regarding the settlement, you may contact the Class Counsel listed in paragraph 29 or Claims Administrator listed in paragraph 17. ***Please do not contact the Clerk of the Court about this class action settlement.***

## WHO REPRESENTS THE PARTIES?

29. The following attorneys (“Class Counsel”) represent the Class Members in the Lawsuit:

**THE CULLEN LAW FIRM APC**  
**Paul T. Cullen**  
**29229 Canwood Street, Suite 208**  
**Agoura Hills, CA 91301**  
**Telephone: (818) 360-2529**  
**Fax: 866-794-5741**  
**e-mail: paul@cullenlegal.com**

30. The attorneys representing Peak DMC North America (formerly known as Suntrek Tours, Inc.), and Intrepid Suntrek in the Lawsuit are:

**Miller and Mann LLP**  
**Joseph D. Miller**  
**1 Embarcadero Center, Suite 4100**  
**San Francisco, CA 94111**  
**415-889-6515**  
**e-mail: jmiller@millermannlaw.com**

31. The attorneys representing Intrepid Travel Proprietary Limited in the Lawsuit are:

**Nelson Mullins Riley & Scarborough LLP**  
**Holly Hempel**  
**Atlantic Station**  
**201 17th Street, NW**  
**Suite 1700**  
**Atlanta, GA 30363**  
**404-322-6198**  
**email: holly.hempel@nelsonmullins.com**

# **EXHIBIT “B”**



***\*\*\*Note: This Second Page Will Not Be Filed With the Court\*\*\****

NAME:

\_\_\_\_\_ HOME  
TELEPHONE NUMBER:

CELLULAR TELEPHONE  
NUMBER:

ADDRESS:

\_\_\_\_\_  
CITY: STATE:

\_\_\_\_\_  
ZIP CODE:

\_\_\_\_\_  
E-MAIL  
ADDRESS: \_\_\_\_\_

# **EXHIBIT “C”**

**CLAIM FORM: COMPLETE AND SIGN FOR MONETARY RECOVERY**

<Barcode> Claim #:  
<First Name> <Last Name>  
<c/o>  
<Address>  
<City>, <State> <Zip> <Country>

Name/Address Changes (if any):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If your name or address is different from those shown above, print the corrections on the lines to the right.

**INSTRUCTIONS:**

1. **THIS CLAIM FORM IS FOR THE CLASS ACTION SETTLEMENTS DESCRIBED IN THE ACCOMPANYING NOTICE.**
2. **IF YOU ARE ELIGIBLE FOR ONE OR BOTH OF THE SETTLEMENTS, YOU MUST TIMELY COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE [REDACTED], TO THE CLAIMS ADMINISTRATOR, [REDACTED] AT [REDACTED], TO RECEIVE YOUR SHARE OF THE MONETARY RECOVERY. *Alternatively*, you may also submit this form by timely e-mailing a copy of it to the claims administrator at the following e-mail address \_\_\_\_\_ or faxing the same to the following fax number: \_\_\_\_\_.**
3. **YOU SHOULD ALSO MAINTAIN A COPY OF THIS AND ANY DOCUMENTS YOU SUBMIT TO THE CLAIMS ADMINISTRATOR ALONG WITH PROOF OF TIMELY MAILING AND/OR SUBMISSION.**

**SETTLEMENT PAYMENT AND CLAIM INFORMATION:** According to Defendant PEAK DMC North America's (also known as Intrepid SunTrek and formerly known as Suntrek Tours, Inc.) records, you are a member of the settlement class in the proposed settlement that is before the Los Angeles Superior Court, LASC Case Number BC462363 and therefore eligible to submit a claim for monetary payment. According to Defendant PEAK DMC's records, during the Class Period of May 25, 2007 through August 31, 2013, you either worked or are deemed<sup>1</sup> to have worked \_\_\_ Tour Days in California. The proposed settlement allocates on average<sup>2</sup> approximately \$\_\_\_\_\_ per Tour Day worked in California (not including days worked while in training) for each participating class member. According to Defendant PEAK DMC's records, during the Class Period of May 25, 2007 through August 31, 2013, you also either spent or are deemed to have spent \_\_\_ days in training in California. The proposed Settlement allocates on

<sup>1</sup> The word "deemed" is used in this form, because the parties to the litigation agree that, due to a lack of verifiable business records between May 2007 and June 2009 (when Suntrek was a predecessor company), a certain number of Tour Days and training days were worked by members of the class. The precise details as to the numbers of days the parties agreed were worked by class members during the various years are set forth in the detailed settlement agreement and other documents on file with the court herein.

<sup>2</sup> The word "average" is used throughout this form, since the amount of pay varied from year to year; the amount paid in settlement varies from year to year, in proportion to the historical changes in wages paid.

average approximately \$\_\_\_\_\_ per each day of training in California for each participating class member. Thus, if you submit a claim, your share of the proposed settlement for all claims based on California law, including claims for alleged nonpayment of minimum wages under California law, the provision of allegedly noncompliant wage statements, and waiting time penalties would be approximately \$\_\_\_\_\_.

However, because Group Leaders typically spend most of their time working outside of California, a substantial portion of the Settlement proceeds are allocated to claims for unpaid wages for work performed outside of the State of California. To receive additional money for days you worked for any of the Defendants during the time period of June 13, 2009 through August 31, 2013 outside of California, but within the United States, **you also must fully complete, sign and submit to the Claims Administrator the form titled CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT**, enclosed herewith, to compensate you for releasing claims you may have pursuant to the Federal Fair Labor Standards Act, 29 U.S.C. §§ 206 *et seq.* ("FLSA"). According to Defendant PEAK DMC's records, during the Collective Class Period June 13, 2009 through August 31, 2013, you worked \_\_\_\_\_ Tour Days outside of California. The proposed Settlement provides on average approximately \$ \_\_ per Tour Day worked outside of California between June 13, 2009 and August 31, 2013; thus, if you complete and submit the form entitled CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT, in addition to the estimated payment of \$ \_\_\_\_\_ for your potential claims based on California law, you will also receive an estimated payment of \$ \_\_\_\_\_ for your potential claims under the FLSA.

The precise amount of money that you may be eligible to receive is not yet determined, but will depend upon a host of factors, including, but not limited to how long you worked for the Defendants, when you worked for the Defendants, the number of Class Members who participate in the settlement and the amounts the Court approves for the service fees to the Class Representatives and the attorneys' fees for Class Counsel.

**PLEASE CHECK THE BOX IN ONE OF THE TWO FOLLOWING PARAGRAPHS:**

I  AGREE with Defendant's calculation of the number of tour Days I worked both inside and outside of California as well as the number of training days as noted above.

***OR***

I  DISAGREE with Defendant's calculation of the number of Tour Days I worked both inside and outside of California and/or the number of training days I believe that the actual number of Tour Days worked was \_\_\_\_\_ in California and \_\_\_ outside of California, and/or I believe the number of days I was in training in California was \_\_\_\_\_. I understand that I must submit a declaration under penalty of perjury to the Claims Administrator along with any evidence I may have in order to challenge the number of days for which I am credited. I understand that the Claims Administrator shall have the responsibility of resolving any disputes over the number of days worked, and its decision shall be final, subject to the discretion of the Los Angeles Superior Court.

**CLAIM FOR MONETARY SETTLEMENT IN THE ALLEN SETTLEMENT:**

I have reviewed the Class Notice and this Claim Form, including the information regarding the released claims included on the Class Notice. I agree to release and not to sue or otherwise make a claim against any of the Released Parties for any claims released under the Settlement Agreement, should the Settlement become final in this matter.

I declare under penalty of perjury under the laws of the United States and the State of California that the information I have provided on this Claim Form is true and correct.

X \_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Last Four Digits of Social Security Number

\_\_\_\_\_  
Former Names (if any)

( ) \_\_\_\_\_  
Daytime Telephone Number

\_\_\_\_\_  
e-mail address (optional)

- IF YOU MOVE, PLEASE SEND THE CLAIMS ADMINISTRATOR, \_\_\_\_\_, YOUR NEW ADDRESS.
- IF YOU MAKE A VALID CLAIM, YOU SHOULD NOT EXPECT TO RECEIVE ANY PAYMENT UNTIL THE SETTLEMENT IS FINAL, WHICH LIKELY WILL OCCUR IN \_\_\_\_\_.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
4 and not a party to the within action. My business address is 19360 Rinaldi Street, Box 647,  
Porter Ranch, CA 91326

5 On January 21, 2014, I served the following document(s) on all interested parties in this  
6 action as follows:

7 **REVISED STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT,  
8 AND RELEASE**

9 and sending it/(them) to:

9 Miller and Mann, LLP  
Joseph Miller, Esq.  
10 Leslie Mann, Esq  
1 Embarcadero Center 41<sup>st</sup> Flr  
11 San Francisco, CA 94111  
[jmiller@millermannlaw.com](mailto:jmiller@millermannlaw.com)  
12 [lmann@millermannlaw.com](mailto:lmann@millermannlaw.com)

13 Nelson Mullins Riley & Scarborough LLP  
Holly Hempel  
14 Atlantic Station  
201 17th Street, NW  
15 Suite 1700  
Atlanta, GA 30363  
16 email: [holly.hempel@nelsonmullins.com](mailto:holly.hempel@nelsonmullins.com)

17 **BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION**

18 [ x ] Based on a court order or an agreement of the parties to accept service by e-mail or electronic  
19 transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the  
party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any  
20 electronic message or other indication that the transmission was unsuccessful.

21 Executed on January 21, 2014, at Los Angeles, California.

22  (State) I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

23   
24 Paul T. Cullen  
25  
26  
27  
28