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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

MOUHAMADOU BA, an individual, on
behalf of himself and all other aggrieved
employees

Plaintiff,

v.

ADVANTAGE GOLD LLC; KIRILL
ZAGALSKY, an individual, and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 20SMCV01687
[Unlimited Jurisdiction]

STIPULATION OF SETTLEMENT

*Assigned for all purposes to the
Honorable Mark Epstein, Dept. R*

Complaint Filed: November 4, 2020
Trial Date: None set

1 This Stipulation of Settlement (“PAGA Settlement Agreement” or “Stipulation of
2 Settlement” or “Settlement”) is made by and between the Named Plaintiff, Mouhamadou Ba
3 (“Plaintiff”), on his own behalf and on behalf of all members of the PAGA Group, as defined
4 below, and Defendants Advantage Gold LLC (“Advantage Gold”) and Kirill Zagalsky
5 (“Zagalsky”) (collectively, “Defendants”), in the lawsuit entitled *Mouhamadou Ba v. Advantage*
6 *Gold LLC, et al.*, Los Angeles Superior Court Case No. 20SMCV01687 (the “Litigation”). The
7 term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendants, or both, as may be
8 appropriate. This PAGA Settlement Agreement resolves all claims asserted against Defendants
9 pertaining to the claims in the Litigation pursuant to and subject to the definitions, recitals, and
10 terms and conditions set forth herein, which by this reference become an integral part of this
11 Stipulation of Settlement, subject to the approval of the Court.

12 **I. DEFINITIONS**

13 **A. Administrative Costs.** All administrative costs of settlement, including cost of
14 notice to the Settlement Group, administration, and any fees and costs incurred or charged by
15 the Settlement Administrator in connection with the execution of its duties under this Stipulation
16 of Settlement.

17 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
18 synonymously herein to mean this PAGA Settlement Agreement for purposes of Resolution.

19 **C. Court.** The term “Court” as used herein means the Superior Court of the State
20 of California for the County of Los Angeles.

21 **D. Date of Approval.** The terms “Date of Approval” or “Approval” as used herein
22 mean the date of the Court’s approval of the PAGA Settlement Agreement.

23 **E. Defendants.** The term “Defendants” as used herein means: Advantage Gold
24 LLC and Kirill Zagalsky.

25 **F. Litigation.** The term “Litigation” as used herein means the action entitled filed
26 in Los Angeles Superior Court, Case No. 20SMCV01687.

27 **G. Named Plaintiff.** The term “Named Plaintiff” as used herein means
28 Mouhamadou Ba. The term Named Plaintiff shall be used synonymously with the term PAGA

Representative.

H. Net Settlement Amount. The term “Net Settlement Amount” as used herein is the total Settlement Payment (\$175,000) and will be allocated as follows: (a) PAGA’s Counsel’s award of attorneys’ fees up to the requested amount of 40% (\$70,000) of the Settlement Payment; (b) PAGA Counsel’s request for reimbursement of Litigation costs; (c) Administrative Costs; (d) PAGA Enhancement Payment; and (e) the remainder of the Settlement Payment after deducting items (a), (b), (c), and (d) herein shall be designated as “PAGA Penalties”, which are allocated between the LWDA and PAGA employees, with seventy-five percent (75%) of penalties payable to the LWDA (“LWDA Payment”) and twenty-five percent (25%) to the PAGA employees (“PAGA GROUP PAYMENT”) pursuant to California’s Private Attorney General Act (“PAGA”), and as provided in Sections VI and X, respectively.

I. Net Settlement Payments. The term “Net Settlement Payment(s)” shall include payments made to the Settlement Group as part of the Resolution.

J. LWDA Payment. The term “LWDA Payment” as used herein means seventy-five percent (75%) of the remainder of the Settlement Amount after the deduction of any award of attorneys’ fees, Litigation costs, and Administrative Costs and the PAGA Enhancement Payment.

K. PAGA GROUP PAYMENT. The term “PAGA GROUP PAYMENT” as used herein means Twenty-five percent (25%) of the remainder of the Settlement Amount after the deduction of any award of attorneys’ fees, Litigation costs, Administrative Costs, and the PAGA Enhancement Payment.

L. PAGA Enhancement Payment. The amount the Court awards to Plaintiff, which will not exceed ten thousand dollars (\$10,000.00), subject to Court approval, in recognition of his actions in conferring a benefit upon the State of California and his effort and work in prosecuting the Litigation on behalf of the PAGA Group.

M. Plaintiff’s Counsel. The term “Plaintiff’s Counsel” as used herein means: Haig B. Kazandjian Lawyers, APC, who are counsel for and acting on behalf of Named Plaintiff.

N. PAGA Group. The PAGA Group is defined as: All persons within the State of

1 California who are or were employed by Defendants or provided services to Defendants in the
2 State of California that were classified as hourly-paid, non-exempt at any time within the PAGA
3 Period.

4 **O. PAGA Period.** The term “PAGA Period” or “Settlement Period” shall refer to
5 the time period from August 24, 2019 to the date of settlement approval.

6 **P. Resolution.** The term “Resolution” as used herein means this Agreement to
7 resolve the Litigation.

8 **Q. Settlement Administrator.** The term “Settlement Administrator” as used herein
9 means Simpluris, which will be responsible for the administration of the Settlement Payment,
10 as defined below, and all related matters.

11 **R. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
12 used synonymously herein to means this PAGA Settlement Agreement.

13 **S. Settlement Amount.** The terms “Settlement Amount” and “Gross Settlement
14 Fund” as used herein mean a fund in the sum of ONE HUNDRED SEVENTY FIVE
15 THOUSAND DOLLARS AND ZERO CENTS (\$175,000.00) which shall be paid by Defendant
16 Advantage Gold, and from which all Net Settlement Payments, PAGA Enhancement Payment,
17 Court approved attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative
18 Costs pursuant to Section VIII, and distribution to the LWDA pursuant to Section XVI shall be
19 paid, except as provided herein.

20 The Parties currently estimate that there are approximately 57 individuals in the PAGA
21 Group, who worked an aggregate total of approximately 1,549 pay periods during the PAGA
22 Period, all of which shall be confirmed by the Settlement Administrator.

23 **II. BACKGROUND**

24 A. On August 24, 2020, Plaintiff provided Defendants with a Private Attorney
25 General Act (“PAGA”) Notice to the Labor and Workforce Development Agency (“LWDA”) and demand letter alleging claims for wage and hour PAGA violations against Defendants on
26 Plaintiff’s behalf and on behalf of other alleged aggrieved employees, including: (1) failure to
27 provide employment records; (2) failure to properly compensate overtime; (3) meal period
28

1 violations; (4) rest period violations; (5) minimum wage violations; (6) failure to properly
2 classify exempt employees; (7) failure to provide accurate, itemized wage statements; (7) failure
3 to pay timely wages; (8) failure to pay wages upon termination; (9) violation of the Wage Theft
4 Prevention Act; (10) failure to reimburse business expenses; and (11) failure to provide notice
5 of paid sick leave.

6 B. On November 4, 2020, Plaintiff brought an action against Defendants, which is
7 pending as *Mouhamadou Ba v. Advantage Gold LLC, et al.*, Los Angeles Superior Court Case
8 No. 20SMCV01687 (the “Litigation”). In the Litigation, Plaintiff asserts the same claims
9 alleged in his PAGA notice to the LWDA and additional claims, including: (1) failure to pay
10 overtime and double time in violation of Labor Code §§510, 1198 and applicable Wage Orders;
11 (2) failure to pay minimum wage in violation of Labor Code §§1182.2, 1194, 1197, 1197.1,
12 1198 and applicable Wage Orders; (3) failure to provide rest and meal periods in violation of
13 Labor Code §§226.7, 512(a), 1198 and applicable Wage Orders; (4) failure to keep accurate
14 payroll records and provide itemized wage statements in violation of Labor Code §§226(a),
15 1174(d), 1198, and the applicable Wage Orders; (5) failure to pay split shift pay in violation of
16 Labor Code § 1198 and California Code of Regulations 11050(4)(C); (6) failure to pay all wages
17 earned on time in violation of Labor Code §204; (7) failure to pay all wages earned upon
18 discharge or resignation in violation of Labor Codes §§201, 202, and 203; (8) failure to provide
19 basic information at the time of hiring and when employment changes occur in violation of
20 Labor Code §2810.5(a)(1)(A)-(C) (Wage Theft Prevention Act); (9) failure to reimburse
21 necessary, business-related expenses in violation of Labor Code §2800 and 2802; and (10)
22 failure to provide notice of paid sick time and accrual in violation of Labor Code §246. The
23 Litigation sought penalties under PAGA for these alleged violations.

24 C. Following the filing of the Litigation, counsel for the Parties met and conferred
25 with respect to the potential settlement of the Litigation. Pursuant to these discussions, the
26 Parties agreed to exchange informal discovery and engaged in private mediation. The Parties
27 subsequently exchanged informal discovery, including: information and documentation
28 concerning the claims set forth in the Litigation, such as documentation regarding Named

1 Plaintiff's employment; information regarding the number of putative PAGA Group members
2 and the number of current versus former employees; and the total pay periods worked by the
3 PAGA Group.

4 D. Named Plaintiff and Plaintiff's Counsel have engaged in good faith, arms-length
5 negotiations. On August 19, 2021, the Parties participated in a mediation with the mediator Todd
6 Smith, which resulted in a settlement. The Parties settled the case, subject to the Approval of
7 the Court and finalization of a formal Stipulation of Settlement. The Parties have now entered
8 into a more detailed, formalized Stipulation of Settlement for submission to the Court for
9 Approval.

10 E. Plaintiff's Counsel has conducted an investigation of the law and facts relating
11 to the claims asserted in the Litigation and has concluded, taking into account the sharply
12 contested issues involved, the expense and time necessary to pursue the Litigation through trial
13 and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
14 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
15 the Named Plaintiff and the members of the PAGA Group pursuant to this Agreement, that a
16 settlement with Defendants on the terms and conditions set forth herein is fair, reasonable,
17 adequate, and in the best interests of the PAGA Group. Named Plaintiff, on his own behalf and
18 as a representative pursuant to PAGA, has agreed to settle the Litigation with Defendants on the
19 terms set forth herein.

20 F. Defendants have concluded that, because of the substantial expense of defending
21 against the Litigation, the length of time necessary to resolve the issues presented herein, the
22 inconvenience involved, and the concomitant disruption to its operations, it is in its best interests
23 to accept the terms of this Agreement. Defendants deny each of the allegations and claims
24 asserted against it in the Litigation. However, Defendants nevertheless desire to settle the
25 Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing
26 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

27 G. This Agreement is intended to and does effectuate the full, final, and complete
28 resolution of all allegations and claims that were asserted in the Litigation by Named Plaintiff

as released below herein.

III. JURISDICTION

The Parties agree that the Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Approval of the Resolution, pursuant to California Code of Civil Procedure Section 664.6 the Parties agree that the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Resolution consistent with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders and judgments entered in connection therewith.

IV. STATEMENT OF NO ADMISSION

A. Defendants deny liability to Named Plaintiff and to the PAGA Group upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Litigation.

B. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement or the Resolution, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used

1 in any proceeding before the Court that has as its purpose the interpretation, implementation, or
2 enforcement of this Agreement or any orders or judgments of the Court entered in connection
3 with the Resolution.

4 C. None of the documents produced or created by Named Plaintiff or the PAGA
5 Group in connection with the claims procedures or claims resolution procedures constitute, and
6 they are not intended to constitute, an admission by Defendants of any violation of any federal,
7 state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or
8 duty at law or in equity.

9 D. Nothing in this Agreement will be construed as an admission or
10 acknowledgement of any kind that any group should or would be given collective treatment in
11 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
12 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
13 regarding the propriety of collective treatment. In the event that this Agreement is not approved
14 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named
15 Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights,
16 or remedies in the Litigation, and Defendants will not be deemed to have waived, limited, or
17 affected in any way any of their objections or defenses in the Litigation.

18 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

19 **A. Release as to All PAGA Group Members.**

20 Upon Approval by the Court of this Settlement, Plaintiff and each member of the PAGA
21 Group, will release any and all claims and causes of action under the California Private
22 Attorneys' General Act of 2004 Cal. Lab. Code § 2698 (PAGA) against Defendants,
23 Defendants' parents, owners, subsidiaries, affiliates, their insurers, attorneys, and all agents
24 thereof ("Released Parties"), arising out of the facts and claims asserted in Named Plaintiff's
25 August 24, 2020 PAGA Notice and in the Complaint in the Litigation for civil penalties under
26 PAGA based upon any of Named Plaintiff's allegations or claims, under any legal theory of
27 liability, including claims that Defendants failed to provide employment records, failed to
28 properly compensate overtime, failed to provide meal and rest periods, failed to provide

1 minimum wage, failed to provide wages for split shifts, failed to provide accurate, itemized
2 wage statements, failed to pay timely wages, failed to pay wages upon termination, violated the
3 Wage Theft Prevention Act, failed to reimburse business expenses, or failed to provide notice
4 of paid sick leave, or any other violations under Labor Code sections 201, 202, 203, 204, 206,
5 210, 218.5, 226, 226.3, 226.7, 246, 248.5, 432, 510, 512(a), 515, 558, 558.1, 1174(d), 1174.5,
6 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2810.5 and 2699, and their subsections,
7 and all applicable Wage Orders as well as all interpretations of these laws by California Courts
8 and administrative bodies ("Released Claims"). This release extends only to the penalties
9 available through PAGA and does not release individual claims.

10 **B. Additional Release and Waiver of Claims by Plaintiff.**

11 In addition to the release of Released Claims against the Defendants and Released Parties
12 made by Plaintiff and all members of the PAGA Group, as set forth above, Plaintiff, in his individual
13 capacity, agrees to release the Defendants and Released Parties from any and all claims, known and
14 unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other
15 source of law, arising as of the date of execution of this Agreement including, but not limited to,
16 claims arising from or related to his employment with Defendants and his compensation while an
17 employee of the Defendants, or including, but not limited to, any alleged violation of:

- 18 • Title VII of the Civil Rights Act of 1964;
- 19 • The Civil Rights Act of 1991;
- 20 • Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- 21 • The Employee Retirement Income Security Act of 1974 ("ERISA");
- 22 • The Immigration Reform and Control Act;
- 23 • The Americans with Disabilities Act of 1990;
- 24 • The Age Discrimination in Employment Act of 1967 ("ADEA");
- 25 • The Workers Adjustment and Retraining Notification Act;
- 26 • The Occupational Safety and Health Act;
- 27 • The Sarbanes-Oxley Act of 2002;
- 28 • The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Genetic Information Nondiscrimination Act of 2008;
- California Family Rights Act – Cal. Gov't Code § 12945.2;
- California Fair Employment and Housing Act – Cal. Gov't Code § 12900 et seq.;
- California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.;

- Statutory Provisions Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775 et seq.;
- California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.;
- California Parental Leave Law – Cal. Lab. Code § 230.7 et seq.;
- California Apprenticeship Program Bias Law – Cal. Lab. Code § 3070 et seq.;
- California Equal Pay Law – Cal. Lab. Code § 1197.5;
- California Whistleblower Protection Law – Cal. Lab. Code § 1102.5;
- California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394;
- Statutory Provision Regarding California Family and Medical Leave – Cal. Lab. Code § 233;
- Statutory Provisions Regarding California Electronic Monitoring of Employees – Cal. Lab. Code § 435;
- The California Occupational Safety and Health Act, as amended, California Labor Code § 6300 et seq., and any applicable regulations thereunder;
- California Obligations of Investigative Consumer Reporting Agencies Law – Cal. Civ. Code § 1786.10 et seq.;
- California Political Activities of Employees Law – Cal. Lab. Code § 1101 et seq.;
- California Domestic Violence Victim Employment Leave Law – Cal. Lab. Code § 230.1;
- California Court Leave Law – Cal. Lab. Code § 230;
- Those other provisions of the California Labor Code that lawfully may be released;
- Los Angeles AIDS-Based Discrimination Ordinance, Los Angeles Municipal Ordinance § 45.80 et seq.;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance;
- Any public policy, contract, tort, or common law; or
- Any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in these matters.

(“Plaintiff’s Released Claims”). Plaintiff shall provide a general release of any and all claims against Defendants and Released Parties and all their present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims by Plaintiff.

Plaintiff’s Released Claims include all claims, whether known or unknown. Even if Plaintiff discovers facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of Plaintiff’s Released Claims, those claims will remain released and forever barred. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code

1 of the State of California, and does so understanding and acknowledging the significance and
2 consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of
3 California states as follows:

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

9 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete
10 release and discharge of Defendants and the Released Parties, Plaintiff expressly acknowledges this
11 Settlement is intended to include in its effect, without limitation, all claims Plaintiff does not know
12 or suspect to exist in Plaintiff's favor at the time of signing this Settlement, and that this Settlement
13 contemplates the extinguishment of any such claims. Plaintiff warrants that he has read this
14 Settlement, including this waiver of California Civil Code section 1542, and that Plaintiff has
15 consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this
16 Stipulation of Settlement and specifically about the waiver of section 1542, and that Plaintiff
17 understands this Settlement and the section 1542 waiver, and so Plaintiff freely and knowingly
18 enters into this Settlement. Plaintiff further acknowledges that Plaintiff later may discover facts
19 different from or in addition to those Plaintiff now knows or believes to be true regarding the matters
20 released or described in this Settlement, and even so Plaintiff agrees that the releases and
21 agreements contained in this Settlement shall remain effective in all respects notwithstanding any
22 later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of
23 any mistake in connection with the true facts involved in the matters, disputes, or controversies
24 released or described in this Settlement or with regard to any facts now unknown to Plaintiff relating
25 thereto. Plaintiff's Released Claims exclude any release of any claims not permitted to be released
26 by law. Nor does this prohibit Plaintiff from exercising Title VII rights by communicating with the
27 EEOC during an investigation. This general release shall not apply to any vested benefits accrued
28 by Plaintiff prior to the effective date of this Agreement under any compensation or benefit plans,

1 programs, and arrangements maintained by Defendants for the benefit of their employees and
2 subject to ERISA or with respect to any other compensation and benefits set forth in this Agreement.

3 **C. Publicity.**

4 The Named Plaintiff and his counsel agree that they have not and will not publish the
5 Resolution. More specifically, Named Plaintiff and his counsel agree that they will not report
6 the Settlement in any medium or in any publication, shall not post or report anything regarding
7 the claims of Named Plaintiff or the Settlement on any website, and shall not contact any
8 reporters or media regarding the Settlement. However, nothing in the provision shall be
9 construed from as preventing the Parties from taking following actions: (a) Named Plaintiff's
10 Counsel shall be allowed to refer to the Litigation and Resolution in other litigations to support
11 their adequacy as attorneys for a putative class or to justify an award of attorney's fees; (b) the
12 Parties shall have the right to disclose the Resolution as may be required under federal or state
13 tax and/or securities laws or under Generally Accepted Accounting Principles; (c) the Parties
14 may refer to the Resolution, describe its terms, and file the settlement agreement with the Court,
15 the California LWDA, and the Settlement Administrator in connection with any proceedings
16 which are reasonably necessary to obtain Approval of the Settlement; and, (d) the Parties or
17 their representatives may communicate with accountants or legal advisors regarding the
18 Resolution. Except for the previously listed exceptions, in response to any inquiries about the
19 Litigation, the Parties may state that "the case was resolved, and it was resolved confidentially."

20 **VI. SETTLEMENT ADMINISTRATOR**

21 Named Plaintiff and Defendant, through their respective counsel, have selected
22 Simpluris as the Settlement Administrator to administer the Resolution, which includes but is
23 not limited to distributing and responding to inquiries about the Notice of Resolution and
24 calculating all amounts to be paid from the Net Settlement Fund. Charges and expenses of the
25 Settlement Administrator, estimated to be no more than **Ten Thousand Dollars (\$10,000.00)** will
26 be paid from the Settlement Amount. Any charges and expenses of the Settlement
27 Administrator greater than the allocated **Ten Thousand Dollars (\$10,000.00)** will come from the
28 Settlement Amount. If the actual Settlement Administrator fees are less than the Parties'

1 estimation, the difference between the actual and estimated Settlement Administrator fees will
2 be included in the Net Settlement Amount.

3 **VII. NOTICE**

4 Named Plaintiff and Defendants, through their respective attorneys, have jointly prepared
5 a Notice of PAGA Settlement (the “Notice”), in the form attached hereto as Exhibit “A” which
6 in substance will be provided to the members of the PAGA Group as follows:

7 As soon as practicable following Approval of the Resolution, but no later than twenty-
8 one (21) business days after the Court’s Approval, Defendant Advantage Gold will provide to
9 the Settlement Administrator the following information about each PAGA Group member: (1)
10 name; (2) last known home address; (3) number of pay periods as a PAGA Group member
11 during the PAGA period; and (4) social security number (“PAGA List”).

12 The Settlement Administrator shall run all the addresses provided through the United
13 States Postal Service NCOA database (which provides updated addresses for any individual who
14 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
15 address) to obtain current address information. Within fifteen (15) business days after the
16 Settlement Administrator’s receipt of the PAGA List, the Settlement Administrator will mail
17 the Notice of Resolution together with a settlement payment to all PAGA Group members by
18 first-class United States mail, postage prepaid, with directions to the Postmaster to forward the
19 Notice and return all undeliverable Notices to the Settlement Administrator. For each Notice of
20 PAGA Settlement and settlement payment that is returned as undeliverable, the Settlement
21 Administrator shall promptly attempt to locate the Aggrieved Employee by performing an
22 additional skip trace and shall re-mail the Notice and settlement check no later than ten (10)
23 calendar days following receipt of the undeliverable Notice. The Notice will be provided in
24 English.

25 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

26 **A. Distribution Formula.**

27 Members of the PAGA Group will receive a lump sum payment as good and valuable
28 consideration for the waiver and release of claims set forth in Section V(A), above, in an amount

1 determined by the Settlement Administrator in accordance with the provisions of this
2 Agreement.

3 The lump sum payment to each member of the PAGA Group will be determined by
4 dividing the Net Settlement Amount by the total number of pay periods worked by all members
5 of the PAGA Group during the Settlement Period (the "Pay Period Amount") and then
6 multiplying the Pay Period Amount by the number of pay periods worked by the individual
7 PAGA member.

8 **B. Funding of Resolution.**

9 The funding of the Settlement Amount will be completed at one time with funds
10 provided to and escrowed by the Settlement Administrator. The funds used for the Settlement
11 Amount shall be paid to the Claims Administrator by Defendant within thirty (30) business days
12 of its receipt of a notice of entry of the Court's Approval order.

13 If a PAGA Group member is deceased at the time of distribution, the Settlement
14 Administrator shall distribute the deceased PAGA Group member's Net Settlement Payment to
15 the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the legal heir(s),
16 the Settlement Administrator shall notify the executor of the deceased PAGA Group member's
17 estate and attempt to place the deceased PAGA Group member's payment in escrow or similar
18 disposition such that any competing heirs may take whatever action they wish to resolve ultimate
19 disposition of such money and the Settlement Administrator and the Parties hereto may disclaim
20 any further interest in or obligation in relation to such money.

21 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
22 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
23 trace search and, if another address is identified, shall mail the check to the newly identified
24 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
25 process, the monies represented by the check shall be turned over according to the below
26 procedures.

27 Settlement checks will specifically indicate that they are void if not negotiated within
28 one hundred eighty 180 days of their issuance. Any settlement checks that remain uncashed one

1 hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall
2 be voided. The Settlement Administrator will remit the entire amount of each PAGA Group
3 member's uncashed Individual Settlement Payment to the California State Controller for deposit
4 in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed
5 Individual Settlement Payment was drafted.

6 **C. PAGA Enhancement Payment.**

7 Subject to Court approval, the Plaintiff shall receive an Enhancement Award of up to
8 Ten Thousand Dollars (\$10,000.00) for services as the PAGA representative. The PAGA
9 Enhancement Payment will be paid from the Gross Settlement Fund and Settlement Amount
10 and shall not constitute payment to any other PAGA Group members other than Plaintiff. To
11 the extent that the Court approves less than the amount of PAGA Enhancement Award that
12 Plaintiff's Counsel requests, the difference between the requested and awarded amounts will be
13 reallocated to the Net Settlement Amount, and Plaintiff shall not have the right to revoke this
14 Settlement, and it will remain binding.

15 Because it is the intent of the Parties that the PAGA Enhancement Payment represent
16 payment to Plaintiff for service to the PAGA Group, and not wages, the Settlement Administrator
17 will not withhold any taxes from the PAGA Enhancement Payment. The PAGA Enhancement
18 Payment will be reported on the IRS Form 1099, which the Settlement Administrator will provide
19 to Plaintiff and to the pertinent taxing authorities as required by law.

20 **D. Time for Distribution of the Attorney Fees, Costs, and LWDA Payment.**

21 The Settlement Administrator shall cause the Court approved attorney's fees and
22 Litigation costs and LWDA Payment to be paid at the same time and manner as the Settlement
23 Payments to the PAGA Group.

24 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

25 The amounts paid under this Agreement do not represent a modification of any
26 previously credited hours of service under any employee benefit plan, policy, or bonus program
27 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
28 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)

sponsored by Defendants', policies, or bonus programs. Any payments made under the terms of this Resolution shall not be applied retroactively, currently, or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendants' benefit plan, policy, or bonus program. Defendants retain the right to modify the language of its benefit plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Resolution 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 purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Resolution.

X. PLAINTIFF'S COUNSEL'S ATTORNEYS' FEES AND LITIGATION COSTS

Defendants shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount in excess of SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$70,000.00) which represents 40% of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle, and administer the Litigation and this Resolution. Any attorneys' fees or Litigation costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. This amount shall include all attorneys' fees, Litigation costs, and expenses for which Named Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Plaintiff's Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount.

XI. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"): 100% as penalties.

All PAGA Group members who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

1 **XII. COURT APPROVAL**

2 This Agreement and the Resolution is contingent upon Approval by the Court. Named
3 Plaintiff and Defendants agree to take all steps as may be reasonably necessary to secure
4 Approval of the Resolution, to the extent not inconsistent with the terms of this Agreement, and
5 will not take any action adverse to each other in obtaining Court Approval of the Resolution in
6 all respects.

7 **XIII. APPRISAL AND CERTIFICATION BY THE SETTLEMENT**
8 **ADMINISTRATOR.**

9 The Settlement Administrator shall keep Plaintiff's Counsel and Defendants' Counsel
10 apprised of all distributions from the Settlement Amount. Upon completion of administration
11 of the Settlement, the Settlement Administrator shall provide written certification of such
12 completion to Plaintiff's Counsel and Defendants' Counsel. The Settlement Administrator shall
13 also provide Defendants with a final accounting, including the names of payees and Net
14 Settlement Payments.

15 **XIV. MISCELLANEOUS PROVISIONS**

16 **A. Stay of Litigation.**

17 The Parties agree that upon full execution of this Settlement, the matter is stayed
18 in its entirety except for any filings and/or motion work necessary to attain Court approval of the
19 Settlement. Should the Court not grant approval of the Motion For Approval of PAGA
20 Representative Action Settlement, or of the Stipulation For Approval Of The PAGA
21 Representative Action Settlement, the stay will be lifted thirty (30) days thereafter and the Parties
22 will be restored to their positions prior to the Settlement and the Settlement shall be null and
23 void. Upon mutual agreement by the Parties, after this thirty(30) days expires, the Parties may
24 agree to additional extensions of this stay in order to work towards obtaining Court approval, and
25 this agreement between the Parties must be in writing.

26 **B. Interpretation of the Agreement.**

27 This Agreement constitutes the entire agreement between Named Plaintiff and
28 Defendants. Except as expressly provided herein, this Agreement has not been executed in

1 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
2 written representations or terms shall modify, vary, or contradict its terms. In entering into this
3 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
4 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
5 enforced under the laws of the State of California, both in its procedural and substantive aspects,
6 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
7 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
8 Court of the State of California for the County of Los Angeles and Named Plaintiff and
9 Defendant hereby consent to the personal jurisdiction of the Court over them solely in
10 connection therewith. The foregoing is only limited to disputes concerning this Agreement and
11 in no way limits or negates the enforceability and effect of any other agreements signed by
12 employees of Defendants. Named Plaintiff, on his own behalf and on behalf of the PAGA
13 Group, and Defendants participated in the negotiation and drafting of this Agreement and had
14 available to them the advice and assistance of independent counsel. As such, neither Named
15 Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed
16 against the other.

17 The terms and conditions of this Agreement constitute the exclusive and final
18 understanding and expression of all agreements between Named Plaintiff and Defendants with
19 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
20 signed by counsel for all Parties or their successors-in-interest.

21 **C. Further Cooperation.**

22 Named Plaintiff and Defendants and their respective attorneys shall proceed diligently
23 to prepare and execute all documents, to seek Approval from the Court, and to do all things
24 reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

25 **D. Confidentiality of Documents.**

26 Named Plaintiff, the Settlement Administrator, and Plaintiff's Counsel shall maintain
27 the confidentiality of all documents, deposition transcripts, declarations, and other information
28 obtained in the Litigation, unless necessary for appeal or such documents are ordered to be

disclosed by the Judge or by a subpoena.

E. Counterparts.

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

F. Authority.

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. No Third-Party Beneficiaries.

Named Plaintiff, members of the PAGA Group, Defendants, and Released Parties are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

H. Force Majeure.

The failure of any party to perform any of its obligations 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, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such party.

I. Deadlines Falling on Weekends or Holidays.

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

J. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiff's Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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K. Defendant's Fees and Costs

All of Defendants' own legal fees, costs, and expenses incurred in this Action shall be borne by Defendants.

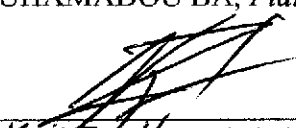
[Signatures to follow on next page]

1 Dated: 9/27/2021, 2021



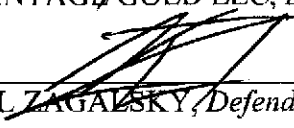
MOUHAMADOU BA, *Plaintiff*

2
3 Dated: 9/27, 2021



By: *Kirill Zagalsky* on behalf of
ADVANTAGE GOLD LLC, *Defendant*

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5 Dated: 9/27, 2021



KIRILL ZAGALSKY, *Defendant*

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7
8 **APPROVED AS TO FORM ONLY:**

9
10 Dated: September 27, 2021

**HAIG B. KAZANDJIAN LAWYERS,
APC**

/s/ Haig Kazandjian

Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Kevin Crough, Esq.
Attorneys for Plaintiff
MOUHAMADOU BA

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16 Dated: September 28, 2021

FISHER & PHILLIPS LLP



Nicole Golob, Esq.
Joel Moon, Esq.
Attorney for Defendants
ADVANTAGE GOLD LLC;
KIRILL ZAGALSKY

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On September 27, 2021, I served the foregoing document entitled **DOCUMENT TITLE** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Haig B. Kazandjian, Esq. Cathy Gonzalez, Esq., Kevin Crough, Esq., HAIG B. KAZANDJIAN LA WYERS, APC 801 North Brand Boulevard, Suite 970 Glendale, California 91203 Telephone: (818) 696-2306 Facsimile: (818) 696-2307 E-Mail: haig@hbklawyers.com cathy@hbklawyers.com kevin@hbklawyers.com	Attorney for Plaintiff MOUHAMADOU BA
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- ☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.
- ☐ **[by FAX]** - I caused the aforementioned document(s) to be telefaxed to the aforementioned facsimile number(s). The machine printed a record of the transmission, and no error was reported by the machine.
- ☐ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.
- ☐ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.
- ☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Express Network, whose business address is 1605 W. Olympic Boulevard, Suite 800, Los Angeles, CA 90015.

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

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Executed September 27, 2021, at Los Angeles, California.

Adriana Preciado

Print Name

By:

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 North Brand Boulevard, Suite 970, Glendale, California 91203.

On September 29, 2021 I served the foregoing document(s) described as: **JOINT STIPULATION OF SETTLEMENT** by method indicated below, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY PERSONAL DELIVERY:** I caused a copy of the document to be delivered personally to the individual(s) named in the attached service list.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the above-listed document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the referenced in attached service list. I placed the envelope or package for collection and overnight delivery at an area regularly utilized by said delivery carrier.

☐ **BY U.S. MAIL:** I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service, with postage fully prepaid, on the same day in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic mail from **melisaf@hbklawyers.com** to the electronic mail addresses indicated on the attached mailing list. The transmission was reported as complete and without error.

☐ **BY FAX TRANSMISSION:** I transmitted the foregoing document(s) by facsimile transmission from 818-696-2307 to the facsimile numbers indicated on the attached mailing list. The transmission was reported as complete and without error on the transmission report, which was properly issued by the transmitting facsimile machine and, pursuant to Rule 2.306(h)(4), a copy of which is attached to the original of this proof of service.

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

Executed on September 29, 2021 at Glendale, California.

/s/ Melisa Flores
Melisa Flores

SERVICE LIST

Nicole Golob, Esq., SBN: 190444
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Joel Moon, Esq., SBN: 290470
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