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9 MARVIN MANN, and all others similarly situated

(Additional attorneys for parties on following page)

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

12 **FOR THE COUNTY OF SANTA CLARA**

13 **(UNLIMITED JURISDICTION)**

14 MARVIN MANN, on behalf of himself and all
15 others similarly situated, and as an “aggrieved
16 employee” on behalf of other “aggrieved
17 employees” under the Labor Code Private
Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 WALNUT BREWERY, INC., a Colorado
21 corporation doing business as Rock Bottom
22 Brewery; SPB HOSPITALITY, LLC, a Delaware
limited liability company; and DOES 1–50,
inclusive,

23 *Defendant(s).*

Case No. 21CV377897

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Action filed: March 10, 2021

Dept: 3, The Honorable Patricia
M. Lucas

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Attorneys for Defendant(s),
WALNUT BREWERY, INC. and SPB HOSPITALITY, LLC

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Marvin Mann
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendants Walnut Brewery, Inc. and SPB Hospitality, LLC (collectively
5 “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.”
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7 **I. DEFINITIONS.**

8 The following definitions are applicable to this Settlement Agreement, in addition to other
9 terms defined elsewhere in the Agreement:

10 **A. “Action”** shall mean: (1) the civil action commenced on March 10, 2021, by
11 Plaintiff against Defendants in the Superior Court of California, County of Santa Clara, Case No.
12 21CV377897, entitled: “Marvin Mann, on behalf of himself, and all others similarly situated, and
13 as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code
14 Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Walnut Brewery, Inc., a Colorado
15 corporation doing business as Rock Bottom Brewery, *et al.*; and DOES 1 through 50, inclusive,
16 *Defendant(s)*.”
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18 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons
19 Defendants employed as hourly, non-exempt employees, who worked at Rock Bottom Restaurant
20 & Brewery in Campbell, California during the Class Period. Defendants estimate that, as of
21 October 20, 2021, there were approximately 130 members.
22

23 **C. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.
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27 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
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1 **Payment**” shall mean the amounts awarded to Class Counsel by the Court to compensate them
2 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
3 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
4 post-Settlement compliance procedures.

5 **E. “Class Notice**” shall mean the Notice of Proposed Settlement attached as **Exhibit**
6 **A** and incorporated by reference into this Agreement.

7 **F. “Class Period**” shall mean the period of time from June 01, 2020, through
8 October 20, 2021.

9 **G. “Class Representative Payment**” shall mean the special payment made to
10 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
11 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
12 and expenses in the event he was unsuccessful in the prosecution of the Action.

13 **H. “Court**” shall mean the Superior Court for the County of Santa Clara, Downtown
14 Superior Court, 191 North First Street, San Jose, CA 95113.

15 **I. “Defense Counsel**” shall mean the attorneys representing Defendants in the
16 Action: Aron Z. Karabel of Waller Lansden Dortch & Davis, LLP and Adam Miller of Miller
17 Miller Gerber LLP.

18 **J. “Effective Date**” is defined as follows: If no objection to this Settlement or to any
19 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
20 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
21 the Court enters an order of final approval of this Settlement; however, if any objection to this
22 Settlement or to any of the terms and or conditions of the Settlement is filed by a member of the
23 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
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1 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
2 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
3 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
4 the appeal or the dissolution of the writ.

5 **K. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
6 to determine whether to approve finally and implement the terms of this Agreement.

7
8 **L. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
9 Two Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) payable by
10 Defendants as provided by this Agreement. The Gross Settlement Amount is non-reversionary;
11 no portion of the Gross Settlement Amount will return to Defendants. Defendants’ employer-
12 side payroll taxes arising from the payments made under this Settlement will be paid by
13 Defendants separate from and in addition to the Gross Settlement Amount. Defendants estimated
14 for purposes of mediation that there are 2,568 Paychecks by 130 Class Members for the period
15 of June 01, 2020, through October 20, 2021.. Before the Parties seek or a Party seeks court
16 approval of the Settlement, the Settlement Administrator will advise Plaintiff’s counsel of
17 Defendants’ report of the total number of Paychecks and Class Members. If the Paychecks and/or
18 Class Members for the Class Period exceeds the referenced 2,568 Paychecks and/or 130 Class
19 Members by more than 10.00%, the Gross Settlement Amount, will increase proportionally
20 according to the number of additional Paychecks or Class Members, whichever results in a higher
21 increase in the Gross Settlement Amount.
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24 **M. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
25 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
26 this Action.
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1 **N. “Net Settlement Amount”** shall mean \$275,000.00 payable by Defendants
2 pursuant to this Settlement, less:

- 3 1. the Class Representative Payment approved by the Court;
- 4 2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
5 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
6 \$15,000.00) approved by the Court;
- 7 3. the Settlement Administrator’s reasonable fees and expenses approved by
8 the Court (not to exceed \$10,000.00);
- 9 4. the amount of \$4,000.00 as PAGA Penalties for the PAGA claim, of which
10 \$1,000.00 will be paid to the PAGA Members and \$3,000.00 will be paid to the LWDA;
- 11 5. any other fees or expenses (other than attorneys’ fees and expenses)
12 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
13 the Court.

14 **O. “PAGA”** means the California Labor Code Private Attorneys General Act of
15 2004 (Lab. Code §§ 2698, *et seq.*).

16 **P. “PAGA Members”** means all individuals Defendants employed as hourly, non-
17 exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California
18 during the PAGA Period.

19 **Q. “PAGA Penalties”** means the portion of the Gross Settlement Amount that the
20 Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA.
21 The Parties have agreed to allocate Four Thousand Dollars and Zero Cents (\$4,000.00), of which,
22 payment from the Gross Settlement Amount to the LWDA will be made in the amount of Three
23 Thousand Dollars and Zero Cents (\$3,000.00), which is 75% of the PAGA Penalties. One
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1 Thousand Dollars and Zero Cents (\$1,000.00), 25% of the PAGA Penalties, will remain in the
2 Net Settlement Amount for distribution pro rate to PAGA Members as described in this
3 agreement. PAGA Members will receive payment from the employee portion of the PAGA
4 Penalties regardless of whether they submit a request for exclusion if the PAGA Penalties are
5 approved by the Court.
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7 **R. “PAGA Period”** shall mean June 01, 2020, through October 20, 2021.

8 **S. “Participating Class”** or **“Participating Class Members”** shall mean all
9 Settlement Class members who do not submit a valid and timely letter requesting to be excluded
10 from the Settlement, consistent with the terms set forth in this Settlement Agreement.

11 **T. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
12 approval of the Settlement without material change.
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14 **U. “Released Claims”** shall mean all claims, rights, demands, liabilities and causes
15 of action that are alleged, or reasonably could have been alleged based on the facts and claims
16 during the period of June 01, 2020, through October 20, 2021 asserted in the Operative Complaint
17 and/or in the letter(s) sent by Plaintiff to the LWDA concerning Defendants and the other
18 Released Parties, whether sounding in law or equity, tort, contract, statute, or other applicable
19 federal, state or local law or regulation, including but not limited to the following claims: failure
20 to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure
21 to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
22 wages, failure to maintain required payroll records, unfair business practices that could have been
23 premised on the claims, causes of action or legal theories of relief described above or any of the
24 claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA
25 or for civil penalties that could have been premised on the claims, causes of action or legal
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1 theories described above or any of the claims, causes of action or legal theories of relief pleaded
2 in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California
3 Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
4 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2699, and any and
5 all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or
6 attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for
7 workers' compensation benefits, unemployment insurance benefits, or any other claim or right
8 that as a matter of law cannot be waived or released. The Parties acknowledge that Released
9 Claims includes any claims for penalties by a PAGA Member resulting from any LWDA
10 investigation. The Parties will meet and confer in good faith if the Court requires changes to the
11 scope of the Released Claims.
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13 **V. "Released Parties"** shall mean Defendants, SPB Hospitality, LLC, Walnut
14 Brewery, Inc., Craft Brewery Group, LLC, and any of their former and present agents,
15 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
16 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
17 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
18 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
19 organizations, and all persons acting under, by, through or in concert with any of them, and each
20 of them.
21

22 **W. "Response Deadline"** shall mean the date 60 days after the Settlement
23 Administrator mails the Class Notice to Class Members, which is the last date on which Class
24 Members may submit Exclusion Requests, written objections to the Settlement, or Workweek
25 disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline
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1 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
2 for Exclusion Requests or Objections will be extended fifteen (15) calendar days for any Class
3 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day
4 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to
5 the next day on which the U.S. Postal Service is open.

6
7 **X. “Settlement”** shall mean the disposition of the Action and all related claims
8 effectuated by this Agreement.

9 **Y. “Settlement Account”** shall mean a fund within the meaning of Treasury
10 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
11 Administrator for the benefit of Participating Class Members and PAGA Members.

12 **Z. “Settlement Administrator”** shall mean Phoenix Settlement Administrators or
13 another administrator proposed by the Parties and appointed by the Court to administer the
14 Settlement. The Parties represent that they do not have any financial interest in the Settlement
15 Administrator or otherwise have a relationship with the Settlement Administrator that could
16 create a conflict of interest.

17
18 **AA. “Settlement Share”** shall mean each Settlement Class Member’s allocated share
19 of the Net Settlement Amount as provided by this Agreement and any payment a PAGA Member
20 is eligible to receive from the PAGA Penalties per Section III.C.4.

21 **II. RECITALS**

22
23 **A.** On or about December 31, 2020, Plaintiff, through his attorneys, sent a letter to
24 the Labor Workforce Development Agency (“LWDA”) alleging the following against
25 Defendant: failure to pay wages, failure to provide meal periods, failure to authorize and permit
26 rest periods, failure to indemnify for business expenses, failure to issue proper wage statements,
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1 failure to timely pay wages, failure to maintain required payroll records, and related allegations
2 (the “PAGA letter”). Plaintiff asserted these representative claims on behalf of all Class Members
3 who are or were employed during the applicable statutory period.

4 **B.** On March 10, 2021, Plaintiff filed a class action complaint in the Santa Clara
5 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
6 and adding a cause of action for unfair competition and a cause of action under the Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”). This complaint is the “Operative Complaint.”

8 **C.** On May 17, 2021, Defendants filed a Motion to Dismiss Plaintiff’s Complaint and
9 denied, and continues to deny, all of Plaintiff’s material allegations. Specifically, Defendants
10 deny the failure to pay wages, failure to provide meal periods, failure to authorize and permit rest
11 periods, failure to indemnify for business expenses, failure to issue proper wage statements,
12 failure to timely pay wages, failure to maintain required payroll records, and related allegations
13 in the Action. Defendants contend that they have complied with the Labor Code, the Business &
14 Professions Code, and the applicable Wage Order at all times. Defendants further allege that the
15 Plaintiff’s claims are not amenable to class treatment because common issues do not predominate
16 and further that all such claims are subject to an agreement to arbitrate that Defendants have
17 entered into with Plaintiff and the Class Members.

18 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
19 in the context of privileged settlement discussions to facilitate an early mediation. The Parties
20 exchanged discovery requests, documents, information, and data including but not limited to ,
21 and related activities.

22 **E.** On October 20, 2021, following much of the foregoing informal discovery and
23 exchange of information, the Parties participated in a mediation session presided over by
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1 Mediator Michael Loeb, an experienced class action mediator. During the mediation, the Parties
2 had a full day of productive negotiations and reached agreement on a class-wide settlement
3 during follow-up discussions after the mediation session. During the mediation sessions, each
4 side, represented by his/their respective counsel, recognized the risk of an adverse result in the
5 Action and agreed to settle the Action and all other matters covered by this Agreement pursuant
6 to the terms and conditions of this Agreement.
7

8 **F.** Based on their own thorough, independent investigation and evaluation of this
9 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
10 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
11 of the Settlement Class in light of all known facts and circumstances, including the risk of
12 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
13 Defendants, the risks of adverse determinations on the merits, and numerous potential appellate
14 issues. Although Defendants contend that they have no liability in this case, Defendants' counsel
15 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
16 the respective risks associated with the case.
17

18 **G.** This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
20 that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class
21 on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses raised
22 in the Action have merit. This Agreement is intended to fully, finally, and forever compromise,
23 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
24 forth in this Agreement.
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26 Based on the foregoing Recitals, the Parties agree as follows:
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1 **III. SETTLEMENT TERMS AND CONDITIONS**

2 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
3 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
4 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
5 preliminarily and finally approved, the conditional certification of the Settlement Class will be
6 of no force or effect, does not constitute an admission by Defendants that class certification is
7 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
8 will litigate the issue of class certification.
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10 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
11 Agreement, the Gross Settlement Amount of Two Hundred and Seventy-Five Thousand Dollars
12 and Zero Cents (\$275,000.00), plus Defendants' employer share of employer-side payroll taxes,
13 is the maximum amount payable by Defendants. In no event will Defendants be required to pay
14 more than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class
15 Members, LWDA, and Settlement Administrator. However, if the number of Class Members
16 during the Class Period increases by more than 10.00% from 130 Class Members, the Defendants
17 will pay a pro rata increase in the Gross Settlement Amount, including pro rata increases in the
18 Class Counsel Fees Payment, and allocation to the Private Attorneys General Act claim.
19 Likewise, if the number of Paychecks during the Class Period increases by more than 10.00%
20 from 2,568 Paychecks, the Defendants will pay a pro rata increase in the Gross Settlement
21 Amount, including pro rata increases in the Class Counsel Fees Payment, and allocation to the
22 Private Attorneys General Act claim. The release provisions of this Settlement will not take effect
23 until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.
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25 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
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1 conditions of this Agreement, the Settlement Administrator will make the following payments
2 out of the Gross Settlement Amount as follows:

3 **1. To Plaintiff.**

4 **(a) Class Representative Payment.** In addition to his Settlement
5 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
6 and Zero Cents (\$15,000.00) as his Class Representative Payment. Defendants will not oppose a
7 Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other
8 payment other than his Settlement Share and Class Representative Payment and acknowledges
9 that he is aware of no other facts or circumstances related to his employment with Defendants
10 that could give rise to any additional entitlement to any further payments. The Settlement
11 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
12 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
13 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
14 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
15 on the Class Representative Payment. The Class Representative Payment is in exchange for the
16 release of Released Claims against the Released Parties, the general Release of Claims by
17 Plaintiff, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any
18 adjustments made by the Court to the requested Class Representative Payment shall not be
19 deemed a material modification of this Settlement Agreement. In the event that the Court reduces
20 or does not approve the requested Class Representative Payment, the Settlement Agreement
21 remains in full force and effect, Plaintiff shall not have the right to revoke the Settlement for that
22 reason, it shall remain binding, and any portion of the Class Representative Payment not awarded
23 to Plaintiff will not revert to Defendants, but instead shall be returned to the Net Settlement
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1 Amount.

2 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
3 not more than Ninety-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-Six Cents
4 (\$91,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel
5 Fees Payment and an amount not more than Fifteen Thousand Dollars and Zero Cents
6 (\$15,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not
7 oppose this request. The Settlement Administrator will pay the amount approved by the Court
8 (but not more than Ninety-One Thousand Six Hundred and Sixty-Six Dollars and Sixty-Six Cents
9 (\$91,666.66) in fees and not more than Fifteen Thousand Dollars and Zero Cents (\$15,000.00)
10 in expenses) out of the Gross Settlement Amount. Withholding and deductions will not be taken
11 from the Class Counsel Fees and Litigation Expenses Payment and one or more Forms 1099 will
12 be issued to Class Counsel with respect to those payments.
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14 **3. To the Settlement Administrator.** The Settlement Administrator will be
15 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
16 Court in an amount currently estimated to not exceed Ten Thousand Dollars and Zero Cents
17 (\$10,000.00).
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19 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
20 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
21 section 2698, *et seq.*, for Four Thousand Dollars and Zero Cents (\$4,000.00), of which, payment
22 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
23 Dollars and Zero Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand
24 Dollars and Zero Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net
25 Settlement Amount for distribution and will be distributed to PAGA Members on a *pro rata* basis
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1 based on the total number of Individual Paychecks (full or partial) worked by each PAGA
2 Member during the PAGA Period. Partial Paychecks shall be rounded up to the nearest whole
3 integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their
4 decision to submit a request for exclusion to opt out of the Settlement.

5 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**

6 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
7 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
8 Settlement Share for each Participating Class Member will be calculated as follows,
9 understanding that the formulas below do not constitute an admission by either party, and are
10 intended only to provide a practical means to simplify and administer the claims process:

11 **(a) Participating Class Members' Settlement Shares.** The
12 settlement shares are allocated 33.33% to wages (for which employment taxes will be deducted
13 and W-2s issued) and 66.67% to penalties and interest (for which 1099s will be issued).

14 **(b) Class Portion of Settlement Ratio Calculation.** The Settlement
15 Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional
16 number comprised of (a) that Class Member's Individual Paychecks as the numerator, and (b)
17 the aggregate total of all Class Members' Individual Paychecks as the denominator. The
18 Settlement Administrator shall assign to each Class Member the "Settlement Share" which shall
19 be calculated by multiplying that Class Member's Settlement Ratio by amount allocated to Class
20 Members from the Net Settlement Amount.

21 **(c) PAGA Portion of Settlement Ratio Calculation.** The Settlement
22 Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional
23 number comprised of (a) that PAGA Member's Individual Paychecks during the PAGA Period
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1 as the numerator, and (b) the aggregate total of all PAGA Members' Individual Paychecks during
2 the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA
3 Member the "Settlement Share" which shall be calculated by multiplying that PAGA Member's
4 Settlement Ratio by amount allocated to PAGA Members from the Net Settlement Amount.

5
6 **2. Settlement Share Worksheet.** Upon calculation of the Class Members'
7 and PAGA Members' Settlement Share, the Settlement Administrator shall furnish to Class
8 Counsel and Defense counsel a worksheet containing a list unique identifying numbers for each
9 of the Class Members with their corresponding Individual Paychecks and Settlement Shares.

10 **E. Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the
11 Class Members' claims for Defendants' failure to pay wages, failure to provide meal periods,
12 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to
13 issue proper wage statements, failure to timely pay wages, failure to maintain required payroll
14 records, and related violations of PAGA and the unfair competition law. Each Class Member
15 shall be individually responsible for the employee's share of applicable payroll tax withholdings
16 and deductions. Accordingly, each Settlement Share allocated to wages will be reduced by
17 applicable employee-side payroll tax withholdings and deductions, and the Settlement
18 Administrator will issue a Form W-2 to each Participating Class Member. The remaining non-
19 wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. For
20 PAGA Members who submit a timely and valid request for exclusion to opt out of the class
21 portion of the Settlement, 100% of the individual Settlement Share to that individual shall be
22 allocated as penalties, and not wages, for which the Settlement Administrator will issue to the
23 PAGA Member an IRS Form-1099. Defendants will be responsible for the normal employer's
24 share of any payroll tax attributable to the wage portion of the Settlement Share payments.
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1 Defendants' payment of the normal employer's share of payroll taxes attributable to the wage
2 portion of the Settlement Share payments will be in addition to the Gross Settlement Amount or
3 Net Settlement Amount.

4 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
5 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
6 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
7 with respect to the performance of its duties and its compensation. The Settlement
8 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
9 Members; and using reasonable measures to contact all Class Members, including conducting a
10 National Change of Address search on all Class Members before mailing the Class Notice to
11 each Class Member's address. The Settlement Administrator's duties will also include re-mailing
12 the Class Notice to the Class Member's new address for those Class Members whose address has
13 changed; providing the Parties with weekly status reports about the delivery of Class Notice;
14 calculating Settlement Shares; issuing and distributing checks to effectuate the payments due
15 under the Settlement; reporting to the Court as required; and otherwise administering the
16 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
17 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
18 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
19 the Settlement Administrator's fees and expenses that are not used, or which are not awarded by
20 the Court will not revert to Defendants, but instead will be part of the Net Settlement Amount for
21 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
22 exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), such cost will be deducted from the
23 Net Settlement Amount.
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1 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

2 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
3 will move the Court for an order granting Preliminary Approval of the Settlement (the “Motion
4 for Preliminary Approval”), setting a date for the Final Approval Hearing, and approving the
5 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
6 as **Exhibit B** to this Agreement), and the Paychecks Dispute form (attached as **Exhibit C** to this
7 Agreement). Any disagreement among the Parties concerning the Class Notice or other
8 documents necessary to implement the Settlement will be referred to the Court.
9

10 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
11 anticipate that they will appear and support the granting of the motion, and that Class Counsel
12 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
13 and Setting Hearing for Final Approval of Settlement.
14

15 **2.** Should the Court decline to approve the Settlement, the Settlement will be
16 null and void and the Parties will have no further obligations under it.

17 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
18 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

19 **1. List of Class Members.** Within fourteen (14) days after the Court grants
20 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
21 Administrator:
22

23 **(a)** An electronic database of all Class Members, last known mailing
24 address, Social Security number, and Defendants’ employee identification number (“Class
25 Members’ Data”).

26 **(b)** Corresponding to each Class Member’s name, Defendants shall
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1 provide a figure indicating the total number of Paychecks during the Class Period in which that
2 Class Member was employed by Defendants as a Class Member. That number of Paychecks shall
3 be referred to as that Class Member's "Individual Paychecks."

4 (c) If any of the Class Members' Data are unavailable to Defendants,
5 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
6 or otherwise agree upon the Class Members' Data prior to when it must be submitted to the
7 Settlement Administrator. Class Members' Data will otherwise remain confidential and will not
8 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
9 Defendants' express written authorization or by order of the Court.

11 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
12 Class Members' Data, or as soon thereafter as it can do so, the Settlement Administrator will
13 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
14 address information provided by Defendants, unless modified by any updated address
15 information that the Settlement Administrator obtains in the course of administration of the
16 Settlement.

18 **3. Returned Class Notice.** If a Class Notice is returned because of an
19 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
20 from receipt of the returned Class Notice, search for a more current address for the Class Member
21 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
22 Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find
23 a more current address. The Settlement Administrator will be responsible for taking reasonable
24 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
25 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
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1 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
2 performing address searches for all mail returned without a forwarding address; and promptly re-
3 mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed,
4 the Settlement Administrator will note for its own records and notify Class Counsel and
5 Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status
6 report provided to the Parties.
7

8 **4. Declaration of Settlement Administrator.** Not later than twenty-one
9 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
10 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
11 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
12 Administrator will supplement its declaration of due diligence if any material changes occur from
13 the date of the filing of its prior declaration.
14

15 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
16 estimated Settlement Share, the Class Member may produce evidence to the Settlement
17 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
18 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
19 must be postmarked by the Response Deadline. A Class Member may use the Paychecks Dispute
20 form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to dispute
21 information in the Class Notice. Absent evidence rebutting Defendants' records, Defendants'
22 records will be presumed determinative. However, if a Class Member produces evidence contrary
23 to Defendants' records by the Response Deadline, the Settlement Administrator shall notify Class
24 Counsel and Defense Counsel to discuss and resolve the dispute, including providing all available
25 relevant information to all counsel. The Parties will resolve all disputes jointly, which shall be
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1 final and binding on any Class Member disputes and shall thereafter instruct the Settlement
2 Administrator how to proceed in processing the dispute. If the Parties cannot reach an agreement,
3 the dispute shall be submitted to the Court for final determination. All such disputes are to be
4 resolved or submitted to the Court not later than fourteen (14) calendar days after the Response
5 Deadline.

6
7 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
8 Members may submit requests to be excluded from the effect of the Settlement, or objections to
9 the Settlement, pursuant to the following procedures:

10 **1. Request for Exclusion from Settlement.** A Class Member may request
11 to be excluded from the effect of this Agreement, and any payment of amounts under this
12 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
13 Member wants to be excluded from this Action. This letter must include the Class Member's
14 name, address, telephone number, signature, and a clear statement requesting to be excluded from
15 the settlement of the class claims, as set forth on the Request for Exclusion form or similar to the
16 following: "I wish to exclude myself from the class settlement reached in the matter of *Mann v.*
17 *Walnut Brewery, Inc.* I understand that by excluding myself, I will not receive money from the
18 settlement of my individual claims." To be valid and timely, the request to be excluded must be
19 postmarked by the Response Deadline and received by the Settlement Administrator. A Class
20 Member may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class
21 Member is not obligated to do so to request exclusion from the Settlement. A Class Member who
22 properly submits a valid and timely request to be excluded from the Action shall not receive any
23 payment of any kind in connection with this Agreement or this Action, shall not be bound by or
24 receive any benefit of this Agreement, and shall have no standing to object to the Settlement,
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1 except that the request for exclusion shall not be effective as to the release of claims arising under
2 PAGA and shall not preclude the Class Member from receiving their share of the PAGA
3 Penalties. A request for exclusion must be mailed to the Settlement Administrator at the address
4 provided on the Class Notice. The Settlement Administrator shall transmit the request for
5 exclusion to counsel for the Parties as follows:
6

7 *To Class Counsel:*

8 David G. Spivak, Esq.
9 The Spivak Law Firm
10 8605 Santa Monica Bl
11 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

12 **2. Objections to Settlement.** The Class Notice will provide that any Class
13 Member who does not request exclusion from the Action and who wishes to object to the
14 Settlement should submit an objection in writing to the Settlement Administrator. To be valid,
15 an objection must be postmarked by the Response Deadline and received by the Settlement
16 Administrator. The written objection to the Settlement should set forth the grounds for the
17 objection and the other information required by this paragraph. The objection should be mailed
18 to the Settlement Administrator at the address provided on the Class Notice. The Settlement
19 Administrator shall transmit the objections to counsel for the Parties as follows:
20

21 *To Class Counsel:*

22 David G. Spivak, Esq.
23 The Spivak Law Firm
24 8605 Santa Monica Bl
25 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

26 Counsel will promptly file such objection with the Court.
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1 The written objection should state the objecting Class Member's full name, address, and
2 the approximate dates of his or her employment with Defendants. The written objection should
3 state the basis for each specific objection and any legal support in clear and concise terms. The
4 written objection also should state whether the Class Member intends to formally intervene and
5 become a party of record in the action, and upon formally intervening, appear and argue at the
6 Final Approval Hearing.
7

8 Regardless of whether an objecting Class Member complies with the objection procedure
9 encouraged above, the Court will provide a Class Member with the opportunity to speak at the
10 final approval hearing regardless of whether he or she has filed an appearance or submitted a
11 written opposition beforehand. If the objecting Class Member does not formally intervene in the
12 action and/or the Court rejects the Class Member's objection, the Class Member will still be
13 bound by the terms of this Agreement.
14

15 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
16 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
17 accurate list of all Class Members who sent timely requests to be excluded from the Action and
18 all Class Members who objected to the settlement.

19 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
20 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
21 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
22 If Class Members accounting for more than 10.00% of the Class submit valid requests to be
23 excluded from the Settlement, then Defendants shall have the unilateral right to void this
24 Settlement (the "Voiding Right"). Defendants may do so by giving notice to Class Counsel and
25 the Court of their election to void the Settlement not later than the later of (i) seven (7) days
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1 before the Final Approval Hearing; or (ii) ten (10) days after receiving notice that the Voiding
2 Right has accrued. No sums shall be payable by Defendants if this Agreement is voided as
3 provided for herein with one exception: Defendants agree to pay any fees owing to the Settlement
4 Administrator for services rendered in the event Defendants exercise their right to void the
5 Settlement.

6
7 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
8 motion for final approval of the Settlement and payment of the Settlement Administrator's
9 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
10 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
11 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
12 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

13
14 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
15 response to any Class Member's objection to the Settlement and/or reply in support of their
16 motion for final approval of the Settlement, and payment of the Settlement Administrator's
17 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
18 and Class Counsel may file replies in support of their motions for the Class Representative
19 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

20
21 If the Court ultimately does not grant final approval of the Settlement or grants final
22 approval conditioned on any material change to the Settlement, then either Party will have the
23 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
24 obligations under the Settlement, including any obligation by Defendants to pay the Gross
25 Settlement Amount or any amounts that otherwise would have been payable under this
26 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
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1 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
2 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
3 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
4 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
5 constitute a material modification to the Settlement within the meaning of this Paragraph and
6 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
7 appeal awards of attorneys' fees and costs less than requested.
8

9 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
10 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
11 The Final Order and Judgment shall permanently bar all Participating Class Members from
12 prosecuting against Defendants any claims within the scope of the Releases contained in this
13 Agreement.
14

15 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
16 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
17 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
18 under court rules or applicable law.

19 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
20 terms and conditions of this Agreement, and that no Class Member timely objects to the
21 Settlement and formally intervenes into the action as required under the California Supreme
22 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
23 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their
24 counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and all
25 rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
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1 appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any
2 extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at
3 the time it is entered. The waiver of appeal does not include any waiver of the right to oppose
4 any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the
5 Judgment, the time for consummation of the Settlement (including making any payments under
6 the Settlement) will be suspended until the appeal is fully and finally resolved and the Judgment,
7 consistent with the terms of this Agreement, becomes Final.

9 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
10 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
11 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
12 the Judgment such that there is a material modification to the Settlement, and that court's decision
13 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
14 then either Plaintiff or Defendants will have the unilateral right to void the Settlement, which the
15 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
16 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
17 materially modifying the Judgment becomes final. The Party exercising his/their right to
18 unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing to the
19 Settlement Administrator for services rendered. An order vacating, reversing or modifying the
20 Court's award of the Class Representative Payment, or the Class Counsel Fees Payment and/or
21 Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material
22 modification of the Judgment within the meaning of this paragraph, and shall not render the
23 Settlement voidable.

26 **J. Establishment of Settlement Account.** The Settlement Administrator shall
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1 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
2 Agreement. Within ten (10) calendar days of the Effective Date, Defendants shall pay the Gross
3 Settlement Amount into the Settlement Account. Should the 10th calendar day following the
4 Effective Date fall on a weekend or state/federal holiday, Defendants shall remit payment on the
5 following weekday/non-holiday.
6

7 **K. Default on Payment.** In the event Defendants fail to pay any portion of the Gross
8 Settlement Amount, it shall be considered a default. In the event Defendants fail to make any
9 payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel
10 and Defense Counsel within five (5) business days of the missed payment. Thereafter,
11 Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement
12 Administrator. In the event Defendants fail to cure the default within the times set forth herein,
13 Plaintiff may, among other remedies, elect to enter judgment against Defendants, on an ex parte
14 basis, for the balance of the unpaid Gross Settlement Amount to date, and Plaintiff will be entitled
15 to recover interest at ten percent (10%) per year and reasonable attorneys' fees and costs.
16

17 **L. Payment of Settlement Shares.** Within ten (10) calendar days of receipt of the
18 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
19 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
20 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
21 in the appropriate amount to the Class Member at the address indicated in the list of Class
22 Member names and addresses provided by Defendants, or as subsequently determined by the
23 Settlement Administrator to be the correct address.
24

25 **M. Uncashed Settlement Share Checks.** Any check issued by the Settlement
26 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
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1 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
2 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
3 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
4 will be paid to the California Unclaimed Property Fund.

5 **N.** The Settlement Administrator will mail or wire all required payments no later than
6 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
7 from Defendants. Proof of payment will be filed with the Court.

8 **O. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
9 days after final disbursement of all funds from the Settlement Account, the Settlement
10 Administrator will serve on the Parties for filing with the Court a declaration providing a final
11 summary report on the disbursements of all funds from the Settlement Account.

12
13 **V. RELEASE OF CLAIMS**

14 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
15 resolution set forth in this Settlement will release and discharge the Released Claims by way of
16 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
17 action of any kind by each and all of the Settlement Class Members (including participation to
18 any extent in any representative or collective action) against the Released Parties. This release
19 will not take effect until Defendants have paid the Gross Settlement Amount in full per this
20 Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid
21 requests for exclusion from the Settlement, will release all Released Claims under PAGA against
22 the Released Parties. The State of California will also release all Released Claims under PAGA
23 against the Released Parties.

24 **B. Release of Claims by Plaintiff.** Upon the Effective Date, and only after
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1 Defendants pay the entirety of the Gross Settlement Amount, Plaintiff will be deemed to have
2 released the Released Parties of and from all of the Released Claims during the Class Period.
3 These claims include all claims alleged or that could have been alleged based on the facts,
4 circumstances, and/or primary rights at issue in the Complaint and any amendments thereto. They
5 include without limitation: (1) all claims for failure to pay wages earned, including minimum
6 wages, and overtime wages; (2) all claims for failure to provide rest periods and claims for rest
7 period premium pay; (3) all claims for failure to provide meal periods and claims for meal period
8 premium pay; (4) all claims for failure to provide accurate wage statements and related penalties;
9 (5) all claims for failure to timely pay wages during employment and at termination; (6) all claims
10 for violation of California Business and Professions Code §§ 17200, et seq., to the extent such
11 claims are predicated on the other claims released herein; and (7) all claims for violation of
12 PAGA and all related claims for penalties, to the extent such claims are predicated on the other
13 claims released herein. Plaintiff's release set forth herein shall include a waiver of all rights under
14 California Civil Code §1542, which includes a release of all known and unknown claims against
15 the Released Parties during the Class Period. Civil Code section 1542 provides:

16
17
18 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
19 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
20 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
21 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
22 **SETTLEMENT WITH THE DEBTOR.**

23 Upon the Effective Date, Plaintiff will be deemed to have waived his rights under Civil Code
24 §1542 during the Class Period, as set forth above. Plaintiff's release excludes any claim for
25 worker's compensation. It also includes his claims, if any, for harassment, discrimination,
26 wrongful termination, negligent infliction of emotional distress and intentional infliction of
27 emotional distress and related prayers for compensatory and punitive damages, interest, attorney
28 fees and costs.

1 **C. Class Counsel.** As of the date the Judgment becomes Final, and except as
2 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
3 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
4 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
5 and expenses against Defendants or the Released Parties arising from or related to the Action,
6 except those incurred to enforce this Agreement and collect the Judgment, including but not
7 limited to claims based on the California Labor Code, the California Civil Code, the California
8 Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class
9 Counsel Released Claims").

11 **D. Tax Liability.** Defendants make no representation as to the tax treatment or legal
12 effect of the payments called for in this Agreement, and Plaintiff, Settlement Class Members,
13 and PAGA Members are not relying on any statement, representation, or calculation by
14 Defendants or by the Settlement Administrator in this regard. Plaintiff, Settlement Class
15 Members, and PAGA Members understand and agree that except for Defendants' payment of the
16 employer's portion of any payroll taxes, they will be solely responsible for the payment of any
17 taxes and penalties assessed on the payments described herein.

19 **E. Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR
20 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
21 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
22 PARTY") ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS
23 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
24 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
25 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
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1 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
2 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
3 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
4 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
5 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
6 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
7 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
8 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
9 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
10 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
13 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
14 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
17 AGREEMENT.
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20 **VI. NON-PUBLICITY PROVISION**

21 The Parties and their counsel agree that they will not issue any press releases, initiate any
22 contact with the press, respond to any press inquiry, or have any communication with the press
23 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
24 that they will not engage in any advertising or distribute any marketing materials relating to the
25 Settlement of this case in any manner that identifies the Defendants, including but not limited to
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1 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
2 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
3 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
4 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
5 conditions of this Settlement in any manner that identifies the Defendants. However, Class
6 Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel
7 in such other matters.
8

9 **VII. MISCELLANEOUS TERMS**

10 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
11 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
12 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
13 and Class Members will be deemed to have waived all such claims, whether known or unknown
14 by them, as part of their release of claims under this Agreement.
15

16 **B. No Admission of Liability.** Defendants deny that they have engaged in any
17 unlawful activity, have failed to comply with the law in any respect, or have any liability to
18 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
19 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
20 be construed as an admission of liability or wrongdoing by Defendants, or an admission by
21 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
22 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
23 Action will have no bearing on, and will not be admissible in connection with, any litigation
24 (other than solely in connection with the Settlement).
25

26 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
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1 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
2 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
3 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
4 Defendants or any other Released Parties, including, but not limited to, evidence of a
5 presumption, concession, indication or admission by any of the Released Parties of any liability,
6 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
7 evidence against any of the Released Parties, in any further proceeding in the Action, or any other
8 civil, criminal or administrative action or proceeding except for purposes of effectuating the
9 Settlement pursuant to this Agreement.
10

11 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
12 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
13 between the Parties relating to the Settlement, and it will then be deemed that no oral
14 representations, warranties, covenants, or inducements have been made to any Party concerning
15 this Agreement or its exhibits other than the representations, warranties, covenants, and
16 inducements expressly stated in this Agreement and its exhibits.
17

18 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
19 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
20 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
21 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
22 The Parties and their counsel will cooperate with each other and use their best efforts to effect
23 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
24 the form or content of any document needed to implement the Agreement, or on any supplemental
25 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
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1 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
2 and assistance of the court will be consistent with this Agreement.

3 **F. Use and Return of Documents and Data.** Upon written request from
4 Defendants, Class Counsel will return or destroy all originals, copies, and summaries of
5 documents and data provided to Class Counsel by Defendants in connection with the settlement
6 negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction
7 of all such documents and data within fourteen (14) days of such request.
8

9 **G. Modification of Agreement.** This Agreement, and all parts of it, may be
10 amended, modified, changed, or waived only by an express written instrument signed by all
11 Parties or their successors-in-interest.

12 **H. Agreement Binding on Successors.** This Agreement will be binding upon, and
13 inure to the benefit of, the successors of each of the Parties.
14

15 **I. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
16 be governed by and interpreted according to the laws of the State of California, without giving
17 effect to any conflict of law principles or choice of law principles.

18 **J. Cooperation in Drafting.** The Parties have cooperated in the drafting and
19 preparation of this Agreement. This Agreement will not be construed against any Party on the
20 basis that the Party was the drafter or participated in the drafting.

21 **K. Fair Settlement.** The Parties and their respective counsel believe and warrant that
22 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
23 at this Agreement through arms-length negotiations, considering all relevant factors, current and
24 potential.
25

26 **L. Headings.** The descriptive heading of any section or paragraph of this Agreement
27
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is inserted for convenience of reference only and does not constitute a part of this Agreement.

M. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:
Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

N. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

[Signature Page to Follow]

03 / 21 / 2022

Dated: February __, 2022

By:

MARVIN MANN

April 28, 2022

Dated: February __, 2022

By:

Steven D. Guterman
Corporate Counsel
Walnut Brewery, Inc., Craft Brewery
Group, LLC, and SPB Hospitality, LLC

THE SPIVAK LAW FIRM

03 / 28 / 2022
Dated: February __, 2022

By:

DAVID G. SPIVAK, Attorneys for
Plaintiff, MARVIN MANN, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: February 18, 2022

By:

WALTER L. HAINES, Attorneys for
Plaintiff, MARVIN MANN, and all
others similarly situated

WALLER LANSDEN DORTCH & DAVIS,
LLP

Dated: February __, 2022

By:

ARON Z. KARABEL, Attorneys for
Defendants, WALNUT BREWERY,
INC., Craft Brewery Group, LLC, and
SPB HOSPITALITY, LLC

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EXHIBIT A

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Marvin Mann v. Walnut Brewery, Inc., et al., Case No. 21CV377897*

4 **As a current or former hourly, non-exempt employees, who worked at Rock Bottom**
5 **Restaurant & Brewery in Campbell, California in California, you may be entitled to**
6 **receive money from a class action settlement.**

7 PSA ID: <<PSA ID>>

8 Please provide current address (if different) here:

9 <<Name>>

10 <<Address1>>

11 <<Address2>>

12 <<City>>, <<State>> <<Zip Code>>

13 *The Santa Clara County Superior Court has authorized this Class Notice.*
14 *This is not a solicitation from a lawyer.*

15 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
16 SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT
17 EMPLOYEE, WHO WORKED AT ROCK BOTTOM RESTAURANT & BREWERY IN
18 CAMPBELL, CALIFORNIA FOR WALNUT BREWERY, INC., CRAFT BREWERY
19 GROUP, LLC AND SPB HOSPITALITY, LLC BETWEEN JUNE 1, 2020, AND OCTOBER
20 20, 2021.

- 21 • A proposed settlement of \$275,000.00 (the “Gross Settlement Amount”) will be used to pay
22 claims to: All persons Defendants Walnut Brewery, Inc. and SPB Hospitality, LLC employed
23 as hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in
24 Campbell, California during the “Class Period” of June 01, 2020, to October 20, 2021 (the
25 “Class Members”). The Gross Settlement Amount includes (a) expenses and fees of the
26 Settlement Administrator up to \$10,000.00; (b) an Class Representative Payment of
27 \$15,000.00 to the Plaintiff Marvin Mann as the class representative; (c) attorneys’ fees of up
28 to \$91,666.66 and litigation expenses of up to \$15,000.00 to Class Counsel; and (d) \$4,000.00
allocated to settle claims brought pursuant to the Private Attorneys General Act, California
Labor Code Section 2698, *et seq.* (“PAGA”) (75% of which will go to the California Labor
& Workforce Development Agency (“LWDA”) and 25% of which will go to Class
Members). The Court must approve these payments at the Final Approval Hearing.
- Defendants estimated for purposes of mediation that there are 2,568 Paychecks by 130 Class
Members for the period of June 01, 2020, through October 20, 2021. Before the Parties seek
or a Party seeks court approval of the Settlement, the Settlement Administrator will advise
Plaintiff’s counsel of Defendants’ report of the total number of Paychecks and Class
Members. If the total Paychecks and/or Class Members for the Class Period exceeds the
referenced 2,568 Paychecks and/or 130 Class Members by more than 10.00%, the Gross
Settlement Amount, including the Class Counsel Fees Payment, the Class Representative

Payment, and the LWDA payment, will increase proportionally according to the number of additional Paychecks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

- The settlement resolves a lawsuit entitled *Marvin Mann v. Walnut Brewery, Inc., et al.*, Case No. 21CV377897 (the “Action”) for Defendants’ alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendants from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendants deny any and all liability arising from any of the claims and contend that they are not responsible for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, or related wrongs, and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of Paychecks, rounded up to the nearest full Paycheck, during the Class Period.

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

HOW MUCH WILL I GET?

You have a total number of <<number of Paychecks>> Paychecks during the Class Period.
It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you do not like the settlement, and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE PAYCHECKS CALCULATION	If you feel that you worked a different amount of Paychecks as an hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California than identified

1		above, you may dispute that calculation by writing to the Settlement Administrator.
2	ATTEND A HEARING	You have the right to attend a fairness hearing that will be
3		conducted by the Court, but you are not required to attend. If you
4		timely file and serve a written objection, and if you also want to
5		speak about your objection at the hearing, you should send a letter
6		to the Settlement Administrator, Phoenix Settlement
		Administrators, providing notice of your intention to appear and
		speak at the hearing.

7 **IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT**

8 **1. Why did I get this Class Notice?**

9 You were sent this Class Notice because you have a right to know about the proposed settlement
10 in the Action and about all of your options before the Court rules on whether to finally approve
11 the settlement. If the Court approves the settlement, and after any objections and appeals are
12 resolved, a “Settlement Administrator” appointed by the Court will make the payments that the
settlement allows. This Class Notice explains the Action, the proposed settlement, your legal
rights, and what benefits are available and how to receive them.

13 The Court in charge of this case is the Santa Clara County Superior Court. The person who sued
14 is called “Plaintiff” and the organizations he sued are called “Defendants.”

15 **2. What is the Action about?**

16 In the Action, Marvin Mann (“Plaintiff”) alleged multiple violations of the California Labor
17 Code, the California Business & Professions Code, and PAGA, including causes of action for:
18 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
19 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
20 timely pay wages, failure to maintain required payroll records, unfair competition under
California’s Business & Professions Code, and claims for civil penalties for violations of the
PAGA.

21 **3. Why is there a settlement?**

22 The parties disagree on the probable outcome of the case with respect to liability, damages, and
23 how much money could be recovered if the Plaintiff won at trial. Defendants believe the Plaintiff
24 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
25 Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
26 and disruption associated with continued litigation and they have therefore chosen to resolve
27 their differences by entering into a settlement. By doing so, the parties can avoid the cost of a
28 trial, yet Class Members are still entitled to receive payments if they comply with the instructions
in this Class Notice. The parties entered into this settlement after arms-length negotiations while
using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel

1 believe that the proposed settlement is fair and reasonable and is in the best interest of the Class
2 Members.

3 4. What is a class action settlement?

4 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
5 approved, the settlement will affect all Class Members, except those who have properly opted
6 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
7 to participate, and the amount of money you may receive. Please read this entire Class Notice
8 carefully.

9 5. What should I do?

10 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
11 that if this Class Notice reaches you and the address where you now live is different, you need
12 to contact the Settlement Administrator and provide updated information so that any future
13 correspondence or the settlement check itself reaches you and is not returned as an address
14 unknown.

15 6. How much will my payment be?

16 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
17 available for review), the remainder will be used to pay Class Members a pro-rata payment based
18 on the number of Paychecks each Class Member worked during the Class Period and PAGA
19 Members a pro-rata payment based on the number of Paychecks each PAGA Member worked
20 during the PAGA Period (“Pro-Rata Share”).

21 The Settlement Administrator shall determine by how many Paychecks each such Class Member
22 has.

23 Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
24 Paychecks calculation, and do not opt out of the settlement, you will be bound by the settlement
25 and receive a settlement payment. **In other words, you do not need to take any action to
26 receive a settlement payment.**

27 If you wish to dispute the number of Paychecks credited to you or anything else about your
28 employment status, you must write to the Settlement Administrator indicating what you believe
is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with
proof of the submission date (such as a postmark or delivery service date stamp). You may use
the enclosed Paychecks Dispute Form for this purpose. If the Settlement Administrator re-mailed
your Class Notice to a new address, you will have additional 15 days from the date of the re-
mailed Class Notice to write to the Settlement Administrator to dispute your Paychecks
information. You must also send any documents or other information that you contend supports
your belief that the information set forth above is incorrect. The Settlement Administrator will
resolve any dispute based upon Defendants’ records and any information you provide. Please be

1 advised that the information on this Notice is presumed to be correct unless the documents you
2 submit are company records from Defendants.

3 7. When would I get my payment?

4 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
5 time>> [a/p].m to decide whether to approve the proposed settlement. If the Court approves the
6 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
7 and appeals can be resolved, and resolving them can take time. To check on the progress of the
8 settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or
9 contact Class Counsel (see below for Class Counsel's contact information.). Please be patient.

10 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
11 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
12 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
13 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
14 Member.

15 8. What am I releasing?

16 If you do not exclude yourself from the settlement (according to the procedures explained below),
17 you will release certain claims as follows:

18 The Parties agree that it is their intent that the resolution set forth in this Settlement will
19 release and discharge the Released Claims by way of any further attempt, by lawsuit,
20 administrative claim or action, arbitration, demand, or other action of any kind by each
21 and all of the Settlement Class Members (including participation to any extent in any
22 representative or collective action) against the Released Parties. This release will not take
23 effect until Defendants have paid the Gross Settlement Amount in full per this Settlement
24 Agreement. All PAGA Members, regardless of whether they submit timely and valid
25 requests for exclusion from the Settlement, will release all Released Claims under PAGA
26 against the Released Parties. The State of California will also release all Released Claims
27 under PAGA against the Released Parties.

28 **"Released Claims"** shall mean all claims, rights, demands, liabilities and causes of action
that are alleged, or reasonably could have been alleged based on the facts and claims
during the period of June 01, 2020, through October 20, 2021 asserted in the operative
complaint filed by Plaintiff in the Action and/or in the letter(s) sent by Plaintiff to the
LWDA concerning Defendants and the other Released Parties, whether sounding in law
or equity, tort, contract, statute, or other applicable federal, state or local law or regulation,
including but not limited to the following claims: failure to pay wages, failure to provide
meal periods, failure to authorize and permit rest periods, failure to indemnify for
business expenses, failure to issue proper wage statements, failure to timely pay wages,
failure to maintain required payroll records, unfair business practices that could have been
premised on the claims, causes of action or legal theories of relief described above or any
of the claims, causes of action or legal theories of relief pleaded in the Action, all claims

1 under PAGA or for civil penalties that could have been premised on the claims, causes of
2 action or legal theories described above or any of the claims, causes of action or legal
3 theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but
4 not limited to the California Code of Regulations and to Labor Code sections 201, 202,
5 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197,
6 1197.1, 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil
7 penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom.
8 Released Claims shall not apply to claims for workers' compensation benefits,
9 unemployment insurance benefits, or any other claim or right that as a matter of law
10 cannot be waived or released. The Parties acknowledge that Released Claims includes
11 any claims for penalties by a PAGA Member resulting from any LWDA investigation.
12 The Parties will meet and confer in good faith if the Court requires changes to the scope
13 of the Released Claims.

14 **"Released Parties"** shall mean Defendants, SPB Hospitality, LLC, Walnut Brewery,
15 Inc., Craft Brewery Group, LLC, and any of their former and present agents, employees,
16 servants, officers, directors, partners, trustees, representatives, shareholders,
17 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
18 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
19 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
20 thereof, affiliated organizations, and all persons acting under, by, through or in concert
21 with any of them, and each of them.

22 The release provisions of this Settlement will not take effect until Defendants have paid the Gross
23 Settlement Amount in full per this Settlement Agreement.

24 9. How can I opt out of this settlement?

25 You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail
26 to the Settlement Administrator with the following sentence, or something similar, stating: "I
27 request to be excluded from the class action proceedings in the matter of *Marvin Mann v. Walnut*
28 *Brewery, Inc.*, Case No. 21CV377897." You may use the enclosed "Election not to Participate
in Settlement Form" for this purpose. You will have 60 **days** from the date of mailing of this
Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement
Administrator, Phoenix Settlement Administrators, <<settlement administrator mailing
address>> and be postmarked no later than <<response deadline>>, or it will not be considered,
and you will be bound by the settlement. If the Settlement Administrator re-mailed your Class
Notice to a new address, you will have additional 15 days from the date of the re-mailed Class
Notice to opt out. You must include your full name (and former names, if any) and address in
your request and you must sign the written request. However, you cannot opt-out of the PAGA
Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you
opt of out of the settlement.

10. Do I have a lawyer in this case?

1 The Court has appointed David G. Spivak of the The Spivak Law Firm, 8605 Santa Monica Bl,
2 PMB 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094 Main,
3 david@spivaklaw.com, and Walter Haines of United Employees Law Group to represent you
4 and other Class Members in the Action. These lawyers are called Class Counsel. They will be
compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want
to be represented by your own lawyer, you may hire one at your own expense.

5 **11. How will the lawyers be paid?**

6 Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third)
7 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs of
8 not more than \$15,000.00 incurred in connection with the Action. The Court may choose to
award less than the amount requested by Class Counsel.

9 **12. How do I tell the Court that I do not like the settlement?**

10 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger
11 settlement; the Court can only approve or deny the settlement. If the Court denies the settlement,
12 no settlement payments will be sent out and the Action will continue. If that is what you want to
happen, you must object.

13 You may object to the proposed settlement in writing or in person. You may also appear at the
14 Final Approval Hearing, either in person or through your own attorney. If you appear through
15 your own attorney, you are responsible for paying that attorney. All written objections and
16 supporting papers should (a) clearly identify the case name and number (*Marvin Mann v. Walnut
Brewery, Inc.*, Case No. 21CV377897), (b) be submitted to the Settlement Administrator by
17 mailing them to the Settlement Administrator, Phoenix Settlement Administrators, <<settlement
18 administrator mailing address>>, and (c) be filed or postmarked on or before <<response
19 deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new address, you
will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members
may appear at the final approval hearing to be heard on their objections, even if they have not
previously served a written objection.

20 **13. When and where will the Court decide whether to approve the settlement?**

21 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
22 hearing time>> [a/p].m in Department 3 at the Santa Clara County Superior Court, Downtown
23 Superior Court, 191 North First Street, San Jose, CA 95113, (The Honorable Patricia M. Lucas
presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and
adequate. If there are objections that were properly made, the Court will consider them. The
24 Court will listen to people who have asked to speak at the hearing. The Court may also decide
25 how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to
approve the settlement. We do not know how long this decision will take.

26 **14. Do I have to come to the hearing?**

1 No. Class Counsel will answer any questions that the Court may have. But you are welcome to
2 come at your own expense. If you sent an objection, you do not have to come to Court to talk
3 about it. As long as you timely mailed your written objection, the Court will consider it. You
may also pay your own lawyer to attend, but it is not required.

4 **15. May I speak at the hearing?**

5 Regardless of whether you properly objected to the settlement, you may speak at the fairness
6 hearing.

7 **16. What happens if I do nothing at all?**

8 You will participate in the settlement and receive payment. You will be bound by the release as
9 set forth herein.

10 **GETTING MORE INFORMATION**

11 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
12 or the Settlement Administrator if you would like more information about the case. You may
13 call <<settlement administrator phone number>> or write the Settlement Administrator, Phoenix
Settlement Administrators, located at <<settlement administrator mailing address>>.

14 You can also access the Santa Clara County Superior Court's Online Services at
15 <https://www.>, or by visiting the Clerk's Office at the Santa Clara County
Superior Court, Downtown Superior Court, 191 North First Street, San Jose, CA 95113),
16 between _:0 a.m. and _:0 p.m., Monday through Friday, excluding Court holidays.

17 **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE**
18 **TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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EXHIBIT B

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, POSTMARKED NOT LATER
THAN <<RESPONSE DEADLINE>>:**

Mann v. Walnut Brewery, Inc. Class Action Settlement Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action, and I wish to be excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

Dated: _____
(Signature)

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EXHIBIT C

PAYCHECK DISPUTE FORM

Superior Court of The State of California
For The County of Santa Clara
Marvin Mann v. Walnut Brewery, Inc., Case No. 21CV377897

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

TO ALL HOURLY, NON-EXEMPT EMPLOYEES, WHO WORKED AT ROCK BOTTOM RESTAURANT & BREWERY IN CAMPBELL, CALIFORNIA AT ANYTIME BETWEEN JUNE 1, 2020, THROUGH OCTOBER 20, 2021.

The amount of your estimated Settlement Award is based upon the number of Eligible Paychecks you worked between June 01, 2020, and October 20, 2021, and Eligible Paychecks you worked between June 01, 2020, and October 20, 2021. "Individual Class Paychecks" are defined as any Paycheck in which you worked at least one (1) day as an hourly, non-exempt employee, who worked at Rock Bottom Restaurant & Brewery in Campbell, California for Craft Brewery Group, LLC, Walnut Brewery, Inc., and SPB Hospitality, LLC (collectively "Defendants") in California during the pay period. "Individual PAGA Paychecks" are defined as any Paycheck in which you worked at least one (1) day as an hourly, non-exempt employees, who worked at Rock Bottom Restaurant & Brewery in Campbell, California for Defendants during the pay period during the period of June 01, 2020, through October 20, 2021. The number of Class and PAGA Paychecks applicable to your claim are set forth below.

YOUR ELIGIBLE PAYCHECKS

Defendants' records indicate that you worked <<number of Paychecks>> Paychecks between June 01, 2020, and October 20, 2021, and <<number of Paychecks>> Paychecks between June 01, 2020, through October 20, 2021.

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

If you wish to dispute the number of Individual Class Paychecks credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Paychecks Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

1 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF PAYCHECKS, RECEIPT**
2 **OF A DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED**
3 **TO TAKE ANY ACTION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

MARVIN MANN, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery; SPB HOSPITALITY, LLC, a Delaware limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21CV377897

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: March 10, 2021
Dept: 3, The Honorable Patricia M. Lucas

The Motion of Plaintiff Marvin Mann (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Patricia M. Lucas presiding. The Court having considered the Motion, the Joint

1 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
2 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

3 1. The Court grants preliminary approval of the Settlement and the Settlement Class
4 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
5 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
6 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
7 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
8 Settlement falls within the range of reasonableness and appears to be presumptively valid,
9 subject only to any objections that may be raised at the final hearing and final approval by this
10 Court. The Court will make a determination at the hearing on the motion for final approval of
11 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
12 adequate and reasonable to the Settlement Class.
13

14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
15 all persons Defendants employed as hourly, non-exempt employees, who worked at Rock
16 Bottom Restaurant & Brewery in Campbell, California for Defendants (collectively “Class
17 Members”), who worked anytime during the Class Period. The “Class Period” shall mean the
18 period of time from June 01, 2020, through October 20, 2021. Defendants estimated for purposes
19 of mediation that there are 2,568 Paychecks by 130 Class Members for the Class Period. Before
20 the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator
21 will advise Plaintiff’s counsel of Defendants’ report of the total number of Paychecks and Class
22 Members. If the Paychecks and/or Class Members for the Class Period exceeds the referenced
23 2,568 Paychecks and/or 130 Class Members by more than 10.00%, the Gross Settlement
24 Amount, including the Class Counsel Fees Payment, the Class Representative Payment, and the
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1 LWDA payment will increase proportionally according to the number of additional Paychecks
2 or Class Members, whichever results in a higher increase in the Gross Settlement Amount. The
3 “Effective Date” means as follows: If no objection to the Settlement or to any of the terms and
4 or conditions of the Settlement are filed by Plaintiff, another member of the Settlement class, or
5 any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an
6 order of final approval of this Settlement; however, if any objection to the Settlement or to any
7 of the terms and or conditions of the Settlement is filed by a member of the Settlement class, or
8 any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for
9 the filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
10 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
11 dissolved and when there is no further time to appeal the dismissal of the appeal or the
12 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
13 of Defendants to pay any funds into the Settlement Account (as defined in the Settlement).
14

15
16 3. This action is provisionally certified pursuant to section 382 of the California
17 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
18 for purposes of settlement only with respect to the proposed Settlement Class.

19 4. The Court hereby preliminarily finds that the Settlement was the product of
20 serious, informed, non-collusive negotiations conducted at arm’s length by the Parties. In
21 making this preliminary finding, the Court considered the nature of the claims set forth in the
22 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
23 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
24 represents a compromise of the Parties’ respective positions. The Court further preliminarily
25 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
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1 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
2 finds that the Settlement was entered into in good faith.

3 5. The Court finds that the dates set forth in the Settlement for mailing and
4 distribution of the Class Notice meet the requirements of due process and provide the best notice
5 practicable under the circumstances and constitutes due and sufficient notice to all persons
6 entitled thereto and directs the mailing of the Class Notice by first class mail to the Settlement
7 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
8 schedule for further proceedings:
9

10 a. By _____, Defendants shall provide
11 _____, the appointed Settlement Administrator,
12 with: (a) An electronic database of all Class Members, last known mailing
13 address, Social Security number and Defendants' employee identification
14 number ("Class Members' Data"); and (b) Corresponding to each Class
15 Member's name, Defendants shall provide a figure indicating the total
16 number of Paychecks during the Class Period and the PAGA Period in which
17 Defendants employed the Class Member. That number of Paychecks shall be
18 referred to as that Class Member's "Individual Paychecks;" (c) If any of the
19 Class Members' Data are unavailable to Defendants, Defendants will so
20 inform Class Counsel and the Parties will make their best efforts to
21 reconstruct or otherwise agree upon the Class Members' Data prior to when
22 it must be submitted to the Settlement Administrator. Class Members' Data
23 will otherwise remain confidential and will not be disclosed to anyone, except
24 as necessary to applicable taxing authorities, or pursuant to Defendants'
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1 express written authorization or by order of the Court.

2 b. **Mailing of Class Notice.** By _____, approximately
3 fourteen (14) days after receiving the Class Members' Data, or as soon
4 thereafter as it can do so, the Settlement Administrator will mail the Class
5 Notice to all identified Class Members via first-class U.S. mail using the
6 mailing address information provided by Defendants, unless modified by any
7 updated address information that the Settlement Administrator obtains in the
8 course of administration of the Settlement.
9

10 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
11 address, the Settlement Administrator will promptly, and not later than ten
12 (10) days from receipt of the returned Class Notice, search for a more current
13 address for the Class Member and re-mail the Class Notice to the Class
14 Member. The Settlement Administrator will use the Class Members' Data
15 and otherwise work with Defendants' Counsel and Class Counsel to find a
16 more current address. The Settlement Administrator will be responsible for
17 taking reasonable steps, consistent with its agreed-upon job parameters, court
18 orders, and fee, to trace the mailing address of any Class Member for whom
19 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
20 reasonable steps shall include the tracking of all undelivered mail;
21 performing address searches for all mail returned without a forwarding
22 address; and promptly re-mailing to Class Members for whom new addresses
23 are found. If the Class Notice is re-mailed, the Settlement Administrator will
24 note for its own records and notify Class Counsel and Defendants' Counsel
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1 of the date and address of each such re-mailing as part of a weekly status
2 report provided to the Parties.

3 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
4 court days prior to the Final Approval Hearing, the Settlement Administrator
5 will provide the Parties for filing with the Court a declaration of due diligence
6 setting forth its compliance with its obligations under this Agreement. Prior
7 to the Final Approval Hearing, the Settlement Administrator will supplement
8 its declaration of due diligence if any material changes occur from the date
9 of the filing of its prior declaration.
10

11 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
12 Class Members may submit requests to be excluded from the effect of the
13 Settlement, or objections to the Settlement, pursuant to the following
14 procedures:
15

16 i. **Request for Exclusion from Settlement.** A Class Member may
17 request to be excluded from the effect of this Agreement, though not
18 the PAGA Released Claims, and any payment of amounts under this
19 Agreement, though not the PAGA Payment, by timely mailing a letter
20 to the Settlement Administrator stating that the Class Member wants
21 to be excluded from this matter (the “Action”). This letter must
22 include the Class Member’s name, address, telephone number, and
23 signature. To be valid and timely, the request to be excluded must be
24 postmarked by the date specified in the Class Notice
25 (_____, or 60 days from the initial mailing of the Class
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1 Notice by the Settlement Administrator). A Class Member who
2 properly submits a valid and timely request to be excluded from the
3 Action shall not receive any payment of any kind in connection with
4 this Agreement or this Action, shall not be bound by or receive any
5 benefit of this Agreement, and shall have no standing to object to the
6 Settlement. A request for exclusion must be mailed to the Settlement
7 Administrator at the address provided on the Class Notice. The
8 Settlement Administrator shall transmit the request for exclusion to
9 counsel for the Parties as follows:
10

11
12 *To Class Counsel:*

13 David G. Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Bl
16 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

- 17 ii. **Objections to Settlement.** The Class Notice will provide that any
18 Class Member who does not request exclusion from the Action and
19 who wishes to object to the Settlement should submit an objection in
20 writing to the Settlement Administrator by _____, or 60
21 days after the Settlement Administrator mails the Class Notice, a
22 written objection to the Settlement which sets forth the grounds for
23 the objection and the other information required by this paragraph.
24 The objection should be mailed to the Settlement Administrator at the
25 address provided on the Class Notice. The Settlement Administrator
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shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Aron Z. Karabel, Esq.
Waller Lansden Dortch & Davis, LLP
511 Union St.
Suite 2700
Nashville, TN 37219

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. However, the objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of this Agreement.

- f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who

1 objected to the settlement.

2 6. The Court approves, as to form and content, the Class Notice in substantially the
3 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
4 form attached as Exhibit B to the Settlement, and the Paychecks Dispute form in substantially
5 the form attached as Exhibit C to the Settlement.

6 7. The Court approves, for settlement purposes only, David G. Spivak of The
7 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8 8. The Court approves, for settlement purposes only, Marvin Mann as the Class
9 Representative.

10 9. The Court approves Phoenix Settlement Administrators as the Settlement
11 Administrator.

12 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
13 costs subject to final review by the Court.

14 11. The Court preliminarily approves the estimated Settlement Administrator costs
15 payable to the Settlement Administrator subject to final review by the Court.

16 12. The Court preliminarily approves Plaintiff's Class Representative Payment
17 subject to final review by the Court.

18 13. A Final Approval Hearing shall be held on _____ at _____.m. in
19 Department 3 of the Superior Court for the State of California, County of Santa Clara, located
20 at the Downtown Superior Court, 191 North First Street, San Jose, CA 95113 to consider the
21 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by
22 this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys'
23 fees and costs and the Class Representative Payment to the Class Representative. The notice of
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1 motion and all briefs and materials in support of the motion for final approval of class action
2 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
3 Court on or before _____.

4 14. If for any reason the Court does not execute and file a final approval order and
5 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
6 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
7 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
8 the litigation, as more specifically set forth in the Settlement.

9 15. The Court expressly reserves the right to adjourn or continue the Final Approval
10 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
11 give prompt notice of any continuance to Settlement Class Members who object to the
12 Settlement.
13 Settlement.

14 **IT IS SO ORDERED.**

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18 _____
19 **DATE**

**THE HONORABLE PATRICIA M.
LUCAS
SUPERIOR COURT JUDGE**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

MARVIN MANN, on behalf of himself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

WALNUT BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery; SPB HOSPITALITY, LLC, a Delaware limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21CV377897

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: March 10, 2021
Dept: 3, The Honorable Patricia M. Lucas

This matter came on for hearing on _____ at _____.m. in Department 3 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith

1 which provides for a Gross Settlement Amount (“GSA”) of up to \$275,000.00 in compromise of
2 all disputed claims on behalf of all hourly, non-exempt employees, who worked at Rock Bottom
3 Restaurant & Brewery in Campbell, California for Defendants at any time during the period of
4 June 01, 2020, to October 20, 2021 (collectively “Class Members”) (“Settlement Class Period”).
5 All capitalized terms used herein shall have the same meaning as defined in the Settlement.
6

7 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
8 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
9 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
10 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
11 and the evidence and argument received by the Court in conjunction with the motions for
12 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
13 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
14 DETERMINATIONS¹:
15

16 1. The Court has jurisdiction over the subject matter of this matter (the “Action”)
17 and over all Parties to the Action, including all Class Members. Pursuant to this Court’s Order
18 Granting Preliminary Approval of Class Action Settlement of _____, the Class Notice
19 was sent to each Class Member by First Class U.S. mail. The Class Notice informed Class
20 Members of the terms of the Settlement, their right to receive their proportional share of the
21 Settlement, their right to request exclusion, their right to comment upon or object to the
22 Settlement, and their right to appear in person or by counsel at the final approval hearing and be
23

24
25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 heard regarding final approval of the Settlement. Adequate periods of time were provided by
2 each of these procedures. No member of the Settlement Class presented written objections to the
3 proposed Settlement as part of this notice process, stated an intention to appear, or actually
4 appeared at the final approval hearing.

5 2. For purposes of this Final Order and Judgment, the Class Members are all hourly,
6 non-exempt employees of Defendants, who worked at Rock Bottom Restaurant & Brewery in
7 Campbell, California during the Class Period, any time during the Settlement Class Period.

8 3. The Court finds and determines that the notice procedure afforded adequate
9 protections to Class Members and provides the basis for the Court to make an informed decision
10 regarding final approval of the Settlement based on the responses of Class Members. The Court
11 finds and determines that the notice provided in this case was the best notice practicable, which
12 satisfied the requirements of law and due process as to all persons entitled to such notice.
13

14 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
15 resolution set forth in this Settlement will release and discharge the Released Claims by way of
16 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
17 action of any kind by each and all of the Settlement Class Members (including participation to
18 any extent in any representative or collective action) against the Released Parties. This release
19 will not take effect until Defendants have paid the GSA in full per this Settlement Agreement.
20 All PAGA Members, regardless of whether they submit timely and valid requests for exclusion
21 from the Settlement, will release all Released Claims under PAGA against the Released Parties.
22 The State of California will also release all Released Claims under PAGA against the Released
23 Parties. **“Released Claims”** shall mean all claims, rights, demands, liabilities and causes of action
24 that are alleged, or reasonably could have been alleged based on the facts and claims during the
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1 period of June 01, 2020 through October 20, 2021 asserted in the operative complaint filed by
2 Plaintiff in this matter and/or in the letter(s) sent by Plaintiff to the LWDA concerning
3 Defendants and the other Released Parties, whether sounding in law or equity, tort, contract,
4 statute, or other applicable federal, state or local law or regulation, including but not limited to
5 the following claims: failure to pay wages, failure to provide meal periods, failure to authorize
6 and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage
7 statements, failure to timely pay wages, failure to maintain required payroll records, unfair
8 business practices that could have been premised on the claims, causes of action or legal theories
9 of relief described above or any of the claims, causes of action or legal theories of relief pleaded
10 in the Action, all claims under PAGA or for civil penalties that could have been premised on the
11 claims, causes of action or legal theories described above or any of the claims, causes of action
12 or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including
13 but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203,
14 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1,
15 1198, 2802, and 2699; and any and all damages, restitution, disgorgement, civil penalties,
16 statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims
17 shall not apply to claims for workers' compensation benefits, unemployment insurance benefits,
18 or any other claim or right that as a matter of law cannot be waived or released. The Parties
19 acknowledge that Released Claims includes any claims for penalties by a PAGA Member
20 resulting from any LWDA investigation. The Parties will meet and confer in good faith if the
21 Court requires changes to the scope of the Released Claims. **“Released Parties”** shall mean
22 Defendants, SPB Hospitality, LLC, Walnut Brewery, Inc., Craft Brewery Group, LLC, and any
23 of their former and present agents, employees, servants, officers, directors, partners, trustees,
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1 representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors,
2 related corporations, divisions, joint venturers, assigns, predecessors, successors, service
3 providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and
4 fiduciaries thereof, affiliated organizations, and all persons acting under, by, through or in concert
5 with any of them, and each of them.

6
7 2. The Court further finds and determines that the terms of the Settlement are fair,
8 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
9 provisions of the Settlement, including the release of claims contained therein, should be and
10 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
11 according to its terms. The “Effective Date” means as follows: If no objection to the Settlement
12 or to any of the terms and or conditions of the Settlement have been filed by Plaintiff, another
13 member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur
14 on the day of this order; however, if any objection to the Settlement or to any of the terms and or
15 conditions of the Settlement is filed by a member of the Settlement class, or any intervenor to
16 this Action, the Effective Date shall occur upon the expiration of the time for the filing any appeal
17 of the order of final approval of the Settlement. If an appeal is filed or any writ granted, then the
18 Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when
19 there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The
20 occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any
21 funds into the Settlement Account (as defined in the Settlement).

22
23
24 3. As of the Effective Date of Settlement, and for the duration of the Settlement Class
25 Period, all Class Members are hereby deemed to have waived and released all Released Claims
26 and are forever barred and enjoined from prosecuting the Released Claims against the Released
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1 Parties as fully set forth in the Settlement. No objections were received by the Parties or the Court
2 through the date of this Final Order and Judgment. The Court finds _____ Class Member(s)—
3 _____—submitted a request for exclusion from the Settlement as determined by
4 the Settlement Administrator and therefore is/are not in the Settlement Class.

5 4. The Court finds and determines that (a) the Settlement Shares to be paid to those
6 Class Members who did not submit a valid and timely letter requesting to be excluded from the
7 Settlement (the “Participating Class Members”) and (b) the LWDA payment as civil penalties
8 under the California Labor Code Private Attorneys General Act of 2004, as amended, California
9 Labor Code sections 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The
10 Court hereby grants final approval to, and orders the payment of, those amounts be made to the
11 Participating Class Members and to the California Labor & Workforce Development Agency
12 (“LWDA”), in accordance with the terms of the Settlement.
13

14 5. The Court further grants final approval to and orders that the following payments
15 be made in accordance with the terms of the Settlement:
16

17 a. Class Counsel fees & costs of \$91,666.66 in attorneys’ fees and
18 \$15,000.00 in litigation costs to Class Counsel;

19 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
20 Marvin Mann for his service as a Class Representative;

21 c. \$10,000.00 in costs of the Settlement Administrator payable to Phoenix
22 Settlement Administrators for its services as the Settlement Administrator; and
23

24 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
25 LWDA.

26 7. The settlement shall proceed as directed in the Settlement, and no payments
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pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of Court 3.769(h).

8. Within 10 calendar days of the Effective Date of Settlement, Defendants shall deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

9. Defendants' payment of such sums shall be the sole financial obligation of Defendants under the Settlement and shall be in full satisfaction of all claims released herein, including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and expenses.

10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of the initial judgement to the California Unclaimed Property Fund.

11. The Parties shall file a final accounting report by _____. A non-appearance case review re submission of a final report is scheduled for _____ at _____**.m. in Department 3.** The Parties shall also prepare and file a stipulation and

1 proposed order and proposed Amended Final Order and Judgment by _____ which
2 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
3 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
4 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
5 If there are objections by any party or non-party, class counsel shall immediately notify the Court
6 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
7 stipulation and proposed order and separate amended judgment is scheduled for
8 _____ at _____.m. in Department 3.

10 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
11 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
12 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
13 accordance with the Settlement.

15 13. The Court hereby enters final judgment in this case in accordance with the terms
16 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
17 Final Order and Judgment.

18 14. The Parties are hereby ordered to comply with the terms of the Settlement.

19 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
20 provided by the Settlement and this Final Order and Judgment.

21 16. The Settlement is not an admission by Defendants nor is this Final Order and
22 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
23 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
24 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
25 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
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1 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
2 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
3 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
4 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
5 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
6 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
7 and any other papers and records on file in the Action may be filed in this Court or in any other
8 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
9 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
10 the Released Claims.
11

12 17. This document shall constitute a Judgment for purposes of California Rule of
13 Court 3.769(h).
14

15 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
16

17
18 **DATE**

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18 **THE HONORABLE PATRICIA M.**
19 **LUCAS**
20 **SUPERIOR COURT JUDGE**
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