

POTTER HANDY LLP
Mark D. Potter (SBN 166317)
mark@potterhandy.com
James M. Treglio (SBN 228077)
jimt@potterhandy.com
100 Pine St., Ste 1250,
San Francisco, CA 94111
Tel: (858) 375-7385
Fax: (888) 422-5191

Attorneys for Plaintiffs and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

RICARDO ALEXANDER OCAMPO,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NOR-CAL BEVERAGE CO., INC.,
a California corporation with its principal place
of business in California, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. 30-2021-01226173-CU-OE-CXC

**SUPPLEMENTAL DECLARATION OF
JAMES M. TREGLIO IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Judge: Honorable Randall J. Sherman
Hearing Date: July 28, 2023
Time: 10:00 a.m.
Department: CX105

1 I, James M. Treglio, declare as follows:

2 1. I am an attorney at law duly authorized to practice law in the State of California. I am over
3 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and would
4 testify competently to them.

5 2. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP,
6 (“PH,” “Co-Class Counsel” or “Plaintiff’s Counsel”), attorney of record for Plaintiff Ricardo Alexander
7 Ocampo (“Plaintiff”).

8 3. On July 26, 2023, I met and conferred with Defendant Nor-Cal Beverage Co., Inc.’s
9 (“Defendant”) Counsel to discuss the Court’s July 28, 2023 Tentative Ruling (available on the Court’s
10 website on July 26, 2023) in regard to Plaintiff’s Motion for Order Granting Preliminary Approval of
11 Class Action Settlement (“Motion”).

12 4. At the July 26, 2023, meet and confer, Defendant’s Counsel and I agreed to immediately
13 address the Court’s concerns as outlined in the Tentative Ruling.

14 5. The Tentative Ruling identified deficiencies in the Parties’ Class Action Settlement
15 Agreement and instructed the Parties to file supplemental papers addressing the Court’s concerns, submit
16 an amendment to the Class Action Settlement Agreement, and provide red-lined versions of any revised
17 papers.

18 6. The foregoing explains how the pending issues were resolved:

19 **Issue:** *The definition of “PAGA Released Claims” in §I.HH of the settlement agreement is too*
20 *broad. The release must be limited to claims that are asserted in the operative pleading or that could be*
21 *asserted based on the facts alleged in the operative pleading. Amaro vs. Anaheim Arena Management,*
22 *LLC (2021) 69 Cal. App. 5th 521, 537 (4th Dist., Div. 3). The PAGA release includes Labor Code §221,*
23 *which was not included in either of plaintiff’s PAGA letters or in plaintiff’s pleadings, and is not based*
24 *on the facts alleged in the operative pleading. Thus, that statute must be removed from the PAGA release.*

25 **Resolution:** The Parties agreed to amend the Class Action Settlement Agreement to remove Labor
26 Code § 221 from the PAGA Released Claims in Section I(HH).

27 The removal of Labor Code § 221 from the PAGA Released Claims is reflected in the Second
28 Amendment to Settlement Agreement, which amends Section I(HH) to state:

I(HH) PAGA Released Claims: PAGA Released Claims mean any and all allegations, causes of action, liabilities, demands, obligations, and claims against PAGA Released Parties for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

Attached as **Exhibit A** is a true and correct copy of the Second Amendment to Settlement Agreement.

The Parties also agreed to revise the Class Notice to reflect the removal of Labor Code § 221 from the PAGA Released Claims. The revisions can be found in the DO NOTHING section on page 3 of the Class Notice and Section 7 of the Class Notice. Attached as **Exhibit B** is a true and correct copy of the revised Class Notice.

7. The Court requested red-lined versions of any revised papers being submitted with Plaintiff's supplemental papers. Attached as **Exhibit C** is a true and correct copy of a red-line version of the Class Notice.

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

Executed this 26 day of July 2023, in San Diego, California.

By  _____
James M. Treglio, Esq.

EXHIBIT A

SECOND AMENDMENT TO SETTLEMENT AGREEMENT

In accordance with section III(M)(8) of the Settlement Agreement between the Parties hereto, the Parties hereby amend section I(HH) to the Settlement Agreement as required by the Court's July 28, 2023 order to provide as follows:

I(HH) PAGA Released Claims: PAGA Released Claims mean any and all allegations, causes of action, liabilities, demands, obligations, and claims against PAGA Released Parties for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

IT IS SO AGREED AND APPROVED:

07/26/2023

Dated: _____, 2023

RICARDO ALEXANDER OCAMPO

Ricardo Ocampo

53C9515DC5D6A6015A033E24D2303B73

readyelgn

Dated: 7/26/, 2023

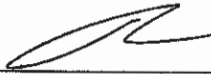
NOR-CAL BEVERAGE CO., INC.



Shannon Deary-Bell, CEO

Dated: July 26, 2023, 2023

POTTER HANDY LLP



James M. Treglio, Esq.

Attorneys for Plaintiff Ricardo Alexander Ocampo,
individually and on behalf of all others similarly
situated

Dated: July 26, 2023

GREENBERG TRAURIG, LLP



Ellen Bronchetti, Esq.

Attorneys for Nor-Cal Beverage Co., Inc.

EXHIBIT B

[CLASS MEMBER NAME]

**RICARDO ALEXANDER OCAMPO PLAINTIFF V. NOR-CAL
BEVERAGE CO, INC., DEFENDANT**

County of Orange, Superior Court of the State of California

Case No.: 30-2021-01226173-CU-OE-CXC

If you are one of the “Class Members ”defined below, a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS
IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves “Class Members” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from October 14, 2017, to [Insert Date of Preliminary Approval].”
- This lawsuit involves “Aggrieved Employees” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020, to [Insert Date of Preliminary Approval].”
- The “Class Period” covered by this lawsuit is October 14, 2017 through [Insert Date of Preliminary Approval].
- The “PAGA Period” covered by this lawsuit is July 21, 2020 through [Insert Date of Preliminary Approval].
- You are receiving this Notice because records reflect that you may be one of the Class Members, defined above.
- Plaintiff in this class action alleges that Defendants failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime and other wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to reimburse all employees’ business expenses’; failed to provide employees with paid sick days as required by applicable law; failed to provide a day of rest; engaged in unfair business

practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

- Defendants deny the allegations in the lawsuit and contend that they are without foundation or merit. The Court has not made any decision regarding the merits of the lawsuit.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Defendants' defenses.
- You will not be penalized or retaliated against for participating in this class action settlement.
- You have several options available to you:

DO NOTHING

By doing nothing, you will receive a share of the settlement proceeds, and you will give up any rights to sue Defendants (and all of their current or former subsidiaries, parents, divisions, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, directors, employees, partners, attorneys, managing agents, attorneys, human resources representatives, payroll representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries) for claims pled or arising out of or reasonably related to the transactions and occurrences pled in the Complaint s, including but not limited to all of the following: (1) Violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) Violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) Violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) Violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) Violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) Violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) Violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) Violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) Violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) Violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) Violations of Labor Code sections 2699, *et. seq.*, and 558 (PAGA and other penalties); (12) Violations

of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

**ASK TO BE
EXCLUDED (OPT
OUT)**

Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Defendants.

If you ask to be excluded, you **will not** receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendants for the same legal claims in this lawsuit.

You cannot exclude yourself from the PAGA portion of this lawsuit or settlement and will receive PAGA payment if eligible.

OBJECT

Object to the terms of this Settlement.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of the Class Members during the Class Period. You have received this notice because Defendant's records indicate that you are a Class Member of this class.

2. What is this lawsuit about?

This lawsuit was filed on October 13, 2021 in this class action on behalf of the Class Members during the Class Period and Aggrieved Employees during the PAGA Period. The Plaintiff alleges in the lawsuit that Defendant failed to pay Plaintiff and his fellow employees in

California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to provide a day of rest; engaged in unfair business practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that they have complied with all of their legal obligations toward the Class Members and Aggrieved Employees, Defendant has also concluded that further litigation would be protracted and expensive.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$390,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to Class Members and Aggrieved Employees, subject to final approval by the Court:

- Attorneys' fees: \$130,000.00
- Litigation Costs: \$20,000.00
- Claims Administration Costs: \$13,000.00
- Class Representative Enhancement Payment: \$10,000.00
- Penalties to the Labor & Workforce Development Agency: The sum of \$60,000.00 is allocated to the PAGA payment, of which \$45,000.00 will be paid to the LWDA, and the remainder, \$15,000.00, will become part of the Net Settlement Amount

After these deductions, \$172,000.00 will be available for payment to the Class Members and Aggrieved Employees receiving this notice ("Net Settlement Amount").

The Individual PAGA Payment is calculated based on each Aggrieved Employee's pro-rata share of the PAGA Payment allocated to the Aggrieved Employees based on workweeks during the PAGA Period as follows: (i) the number of workweeks he or she worked as an hourly-paid, non-exempt employee in the State of California during the PAGA Period, divided by (ii) the total number of workweeks worked by all Aggrieved Employees for the Defendant collectively during

the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Aggrieved Employee based on their dates of employment with Defendant for purposes of this calculation.

The Settlement Administrator will then calculate the Individual Settlement Shares for Participating Class Members. The Individual Settlement Share is calculated based on each Participating Class Member's pro-rata share of the Net Settlement Amount (less Individual PAGA Payments) based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as an hourly-paid, non-exempt employee in California during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount (less Individual PAGA Payments).

Thirty-three and one-third percent (33 1/3%) of your Individual Settlement Share payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share payment only and reported on an IRS Form W-2. The remaining sixty-six and two-thirds percent (66 2/3%) of your Individual Settlement Payment will be treated as penalties, interest, and reimbursement and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will send out settlement checks to Participating Class Members and Aggrieved Employees after the settlement is finally approved by the Court. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise it will be voided and the amount of your settlement payment will be sent to the *cy pres* recipient Legal Aid at Work.

According to Defendant's records, the total number of workweeks during which you were under contract with the Defendant during the Class Period is _____, and the total number of workweeks that you were under contract with the Defendant during the Class Period to deliver two or more delivery routes is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Rust Consulting
[Insert Address]

You must submit such information by XXXX. Class Counsel and the Claims Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Court shall make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Claims Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all claims asserted or that could have been asserted in the lawsuit, including those for (1) violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) violations of Labor Code sections 2699, *et seq.*, and 558 (PAGA and other penalties); (12) violations of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing the “Opt-Out Form” included in this Notice packet indicating that they do not want to participate in the settlement to the Claims Administrator, Rust Consulting, by XXXX. In order to be valid, the Opt-Out Form must contain your full name, and any names used in the past, your address, your social security number, and a clear and unequivocal statement that you want to be excluded from the Settlement.

If your Opt-Out Form is postmarked after XXXX, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who

submits a timely and valid Opt-Out Form shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit.

You cannot opt out of the PAGA portion of the settlement and will receive a PAGA payment if eligible.

10. What if I have an objection?

A Class Member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Claims Administrator no later than **XXXX**.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. The Final Approval and Fairness Hearing will be held in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time).

Class Counsel:

POTTER HANDY, LLP

Mark D. Potter

Email: mark@potterhandy.com

James M. Treglio

Email: jimt@potterhandy.com

Tel: (858) 375-7385

Counsel for Defendant Nor-

Cal Beverage Co. Inc.

GREENBERG TRAURIG

Ellen.Bronchetti@gtlaw.com

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Class Representative Service Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Claims Administrator, Rust Consulting (listed above), or Class Counsel (listed above).

14. Additional information and Courthouse social distancing information

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701. You may also review the settlement agreement and other documents on-line at [www._____](http://www._____.) or you may contact the Settlement Administrator as follows:

Rust Consulting

Telephone: _____

Facsimile: _____

Email: _____

Website: _____

You may also contact Class Counsel at the address and telephone number provided in Section 4 above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

If you are planning to come to the Final Approval Hearing, you should review and comply with the Court's Coronavirus (COVID-19) Guidance which may be found on the Court's website, at <https://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT C

[CLASS MEMBER NAME]

**RICARDO ALEXANDER OCAMPO PLAINTIFF V. NOR-CAL
BEVERAGE CO, INC., DEFENDANT**

County of Orange, Superior Court of the State of California

Case No.: 30-2021-01226173-CU-OE-CXC

If you are one of the “Class Members ”defined below, a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS
IMPORTANT INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves “Class Members” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from October 14, 2017, to [Insert Date of Preliminary Approval].”
- This lawsuit involves “Aggrieved Employees” defined as:

“All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020, to [Insert Date of Preliminary Approval].”
- The “Class Period” covered by this lawsuit is October 14, 2017 through [Insert Date of Preliminary Approval].
- The “PAGA Period” covered by this lawsuit is July 21, 2020 through [Insert Date of Preliminary Approval].
- You are receiving this Notice because records reflect that you may be one of the Class Members, defined above.
- Plaintiff in this class action alleges that Defendants failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime and other wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to reimburse all employees’ business expenses’; failed to provide employees with paid sick days as required by applicable law; failed to provide a day of rest; engaged in unfair business

practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

- Defendants deny the allegations in the lawsuit and contend that they are without foundation or merit. The Court has not made any decision regarding the merits of the lawsuit.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Defendants' defenses.
- You will not be penalized or retaliated against for participating in this class action settlement.
- You have several options available to you:

DO NOTHING

By doing nothing, you will receive a share of the settlement proceeds, and you will give up any rights to sue Defendants (and all of their current or former subsidiaries, parents, divisions, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, directors, employees, partners, attorneys, managing agents, attorneys, human resources representatives, payroll representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries) for claims pled or arising out of or reasonably related to the transactions and occurrences pled in the Complaint s, including but not limited to all of the following: (1) Violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) Violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) Violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) Violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) Violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) Violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) Violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) Violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) Violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) Violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) Violations of Labor Code sections 2699, *et. seq.*, and 558 (PAGA and other penalties); (12) Violations

of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, ~~221~~, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

**ASK TO BE
EXCLUDED (OPT
OUT)**

Exclude yourself from this lawsuit. Keep your rights to file a separate claim against Defendants.

If you ask to be excluded, you **will not** receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendants for the same legal claims in this lawsuit.

You cannot exclude yourself from the PAGA portion of this lawsuit or settlement and will receive PAGA payment if eligible.

OBJECT

Object to the terms of this Settlement.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of the Class Members during the Class Period. You have received this notice because Defendant's records indicate that you are a Class Member of this class.

2. What is this lawsuit about?

This lawsuit was filed on October 13, 2021 in this class action on behalf of the Class Members during the Class Period and Aggrieved Employees during the PAGA Period. The Plaintiff

alleges in the lawsuit that Defendant failed to pay Plaintiff and his fellow employees in California all wages owed; failed to pay Plaintiff and his fellow employees in California all overtime wages owed; failed to provide Plaintiff and his fellow employees meal periods and pay missed meal period premiums; failed to provide Plaintiff and his fellow employees paid rest breaks and pay rest break premiums; failed to provide accurate wage statements to Plaintiff and his fellow employees within the four years prior to the filing of this Complaint; failed to pay all wages owed in a timely manner; failed to pay all wages due to former employees based on the foregoing; failed to provide a day of rest; engaged in unfair business practices; and are liable for penalties under California's Private Attorneys General Act or "PAGA."

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that they have complied with all of their legal obligations toward the Class Members and Aggrieved Employees, Defendant has also concluded that further litigation would be protracted and expensive.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$390,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to Class Members and Aggrieved Employees, subject to final approval by the Court:

- Attorneys' fees: \$130,000.00
- Litigation Costs: \$20,000.00
- Claims Administration Costs: \$13,000.00
- Class Representative Enhancement Payment: \$10,000.00
- Penalties to the Labor & Workforce Development Agency: The sum of \$60,000.00 is allocated to the PAGA payment, of which \$45,000.00 will be paid to the LWDA, and the remainder, \$15,000.00, will become part of the Net Settlement Amount

After these deductions, \$172,000.00 will be available for payment to the Class Members and Aggrieved Employees receiving this notice ("Net Settlement Amount").

The Individual PAGA Payment is calculated based on each Aggrieved Employee's pro-rata share of the PAGA Payment allocated to the Aggrieved Employees based on workweeks during the PAGA Period as follows: (i) the number of workweeks he or she worked as an hourly-paid, non-exempt employee in the State of California during the PAGA Period, divided by (ii) the total

number of workweeks worked by all Aggrieved Employees for the Defendant collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Aggrieved Employee based on their dates of employment with Defendant for purposes of this calculation.

The Settlement Administrator will then calculate the Individual Settlement Shares for Participating Class Members. The Individual Settlement Share is calculated based on each Participating Class Member's pro-rata share of the Net Settlement Amount (less Individual PAGA Payments) based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as an hourly-paid, non-exempt employee in California during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount (less Individual PAGA Payments).

Thirty-three and one-third percent (33 1/3%) of your Individual Settlement Share payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Share payment only and reported on an IRS Form W-2. The remaining sixty-six and two-thirds percent (66 2/3%) of your Individual Settlement Payment will be treated as penalties, interest, and reimbursement and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will send out settlement checks to Participating Class Members and Aggrieved Employees after the settlement is finally approved by the Court. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise it will be voided and the amount of your settlement payment will be sent to the *cy pres* recipient Legal Aid at Work.

According to Defendant's records, the total number of workweeks during which you were under contract with the Defendant during the Class Period is _____, and the total number of workweeks that you were under contract with the Defendant during the Class Period to deliver two or more delivery routes is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on these pay periods, your estimated settlement amount is _____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Rust Consulting
[Insert Address]

You must submit such information by **XXXX**. Class Counsel and the Claims Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Court shall make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Claims Administrator in order to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: all claims asserted or that could have been asserted in the lawsuit, including those for (1) violation of Labor Code sections 1194, 1194.2, 1198, 1199 and WAGE ORDER NO. 1 (Failure to Pay All Wages Owed); (2) violation of Labor Code sections 510, 1194, 1194.2, 1198, and WAGE ORDER NO. 1 (Failure to Pay All Overtime Wages Owed); (3) violation of Labor Code sections 226.7, 512, and WAGE ORDER NO. 1 (Failure to Provide Meal Periods and Pay Missed Meal Period Premiums); (4) violation of Labor Code sections 226.7 and WAGE ORDER NO. 1 (Failure to Provide Rest Breaks and Pay Missed Rest Break Premiums) (5) violation of Labor Code sections 226 and 226.3 (Non-Compliant Wage Statements); (6) violation of Labor Code section 204 (Failure to Pay All Wages Owed in a Timely Manner); (7) violation of Labor Code sections 201, 202 and 203 (Final Wages Not Timely Paid); (8) violation of Labor Code sections 551 and 552 (Failure to Provide a Day of Rest); (9) violation of Labor Code section 2802 (Failure to Reimburse Business Expenses); (10) violation of Labor Code sections 245, 246, 247, and 248 (Failure to Provide Paid Sick Days); (11) violations of Labor Code sections 2699, *et seq.*, and 558 (PAGA and other penalties); (12) violations of Business & Professions Code sections 17200, *et seq.*; (13) any other claims or penalties under the wage and hour laws pleaded or that reasonably could have been alleged in the Complaint and Class Action; (14) all damages, penalties, interest and other amounts recoverable under said causes of action under California law and federal law, to the extent permissible, including but not limited to the Labor Code as to the facts alleged in the Class Action, the applicable Wage Orders as to the facts alleged in the Complaints, and the California Unfair Competition Law; and (15) all allegations, causes of action, liabilities, demands, obligations, and claims for penalties pursuant to PAGA based on any and all claims that are asserted or could be asserted based on the facts alleged in the First Amended Complaint that arose during the PAGA Period, which includes, but is not necessarily limited to, violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, ~~221~~, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing the “Opt-Out Form” included in this Notice packet indicating that they do not want to participate in the settlement to the Claims Administrator, Rust Consulting, by **XXXX**. In order to be valid, the Opt-Out Form must contain your full name, and any names used in the past, your address, your social security number, and a clear and unequivocal statement that you want to be excluded from the Settlement.

If your Opt-Out Form is postmarked after **XXXX**, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who

submits a timely and valid Opt-Out Form shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit.

You cannot opt out of the PAGA portion of the settlement and will receive a PAGA payment if eligible.

10. What if I have an objection?

A Class Member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Claims Administrator no later than **XXXX**.

If you ask to be excluded from this lawsuit, you may **not** also object to the terms of the settlement.

Any Class Member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. The Final Approval and Fairness Hearing will be held in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time).

Class Counsel:

POTTER HANDY, LLP

Mark D. Potter

Email: mark@potterhandy.com

James M. Treglio

Email: jimt@potterhandy.com

Tel: (858) 375-7385

Counsel for Defendant Nor-

Cal Beverage Co. Inc.

GREENBERG TRAURIG

Ellen.Bronchetti@gtlaw.com

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701 on **[insert date]**, at **XX (a.m./p.m.)** (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Class Representative Service Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Claims Administrator, Rust Consulting (listed above), or Class Counsel (listed above).

14. Additional information and Courthouse social distancing information

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file in Department _____ of the County of Orange, Superior Court of the State of California, located at 700 Civic Center Dr W, Santa Ana, California 92701. You may also review the settlement agreement and other documents on-line at [www._____](http://www._____.) or you may contact the Settlement Administrator as follows:

Rust Consulting

Telephone: _____

Facsimile: _____

Email: _____

Website: _____

You may also contact Class Counsel at the address and telephone number provided in Section 4 above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

If you are planning to come to the Final Approval Hearing, you should review and comply with the Court's Coronavirus (COVID-19) Guidance which may be found on the Court's website, at <https://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE