

SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Class Action Settlement Agreement is made by and between Plaintiff Richard Alexander Ocampo (“Plaintiff”), individually and as a representative of the Class, as defined below, the Eligible Aggrieved Employees (as defined below), and the State of California, on the one hand, and Defendant Nor-Cal Beverage Co., Inc. (“Defendant”), on the other hand. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.” This Class Action Settlement Agreement is subject to the approval of the Court and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Settlement, or the conditions precedent are not met for any reason, this Class Action Settlement Agreement is void and of no force or effect whatsoever.

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Action**: The Class Action Complaint that was filed on October 13, 2021, in the Superior Court of California, County of Orange, which is captioned *Ricardo Alexander Ocampo, individually, and on behalf of all others similarly situated v. Nor-Cal Beverage Co., Inc.*, Case No. 30-2021-01226173-CU-OE-CXC.
- B. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$13,000, shall not exceed \$13,000 and shall be paid from the Gross Settlement Amount in the Qualified Settlement Fund.
- C. **Agreement, Settlement Agreement or Settlement**: The settlement agreement reflected in this document, titled “Settlement Agreement,” including its exhibits.
- D. **Attorney Fee Award**: The amount, not to exceed One Hundred, Thirty Thousand Dollars of the Gross Settlement Amount or \$130,000, subject to Court approval, the amounts to be paid to Class Counsel for attorneys’ fees to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action. The Attorney Fee Award shall be paid from the Gross Settlement Amount in the Qualified Settlement Fund and will not be opposed by Defendant.
- E. **Class**: All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California, from October 14, 2017 to the date of Preliminary Approval.

- F. **Class Counsel:** James M. Treglio and Mark D. Potter of Potter Handy LLP.
- G. **Class Data:** The Class Data means information regarding Class Members that Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class Member's Social Security and Employee ID number; and (iv) the Class Member's relevant dates of employment; provided, however, that the confidentiality of the Class Data shall be maintained by the Settlement Administrator in a manner reasonably calculated to protect the privacy interest of each Class Member.
- H. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. **Class Notice:** The Notice of Class and Representative Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, incorporated by reference into this Agreement and subject to Court approval.
- J. **Class Period:** The time period from October 14, 2017, to the date of Preliminary Approval.
- K. **Class Representative or Plaintiff:** Ricardo Alexander Ocampo.
- L. **Class Representative Enhancement Payment:** The additional monetary payment awarded by the Court to Plaintiff in an amount not to exceed \$10,000 in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant's expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by Plaintiff. This Class Representative Enhancement Payment shall be paid from the Gross Settlement Amount in the Qualified Settlement Fund and will not be opposed by Defendant. This Class Representative Enhancement Payment is subject to approval of the Court.
- M. **Complaint:** The Class Action Complaint that was filed on October 13, 2021 October 13, 2021, in the Superior Court of California, County of Orange, which is captioned *Ricardo Alexander Ocampo, individually, and on behalf of all others similarly situated v. Nor-Cal Beverage Co., Inc.*, Case No. 30-2021-01226173-CU-OE-CXC.
- N. **Cost Award:** The amount subject to Court approval, to be paid to Class Counsel for expenses to compensate Class Counsel for related litigation expenses billed in connection with the Action, subject to proof and not to exceed \$20,000. The Cost Award will be paid from the Gross Settlement Amount in the Qualified Settlement Fund and will not be opposed by Defendant.

- O. Counsel for Defendant:** Attorneys Ellen Bronchetti Of Greenberg Traurig.
- P. Court:** The Superior Court of California, County of Orange.
- Q. Defendant:** Nor-Cal Beverage Co., Inc., including, but not limited to all their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, and parent companies.
- R. Effective Final Settlement Date:** The effective date of this Settlement will be when the Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no Plaintiff-in-intervention at the time the Court grants Final Approval of the Settlement, the date the court grants Final Approval of the Settlement.
- S. Eligible Aggrieved Employees:** All current and former hourly-paid, non-exempt employees employed by Nor-Cal Beverage Co., Inc. in California from July 21, 2020, to the date of Preliminary Approval.
- T. Exclusion Form:** The Election Not To Participate In Class Action Settlement (“Opt-Out Form”), substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.
- U. Final Approval:** The final order entered by the Court after the Final Approval hearing, certifying the Class, approving the terms and conditions of this Agreement, authorizing distribution of the Settlement Checks, Class Representative Enhancement Payment, Cost Award, Attorney Fee Award, Administration Costs, Individual Settlement Shares, and PAGA Payment, consistent with this Agreement.
- V. Gross Settlement Amount or GSA:** The agreed upon common fund settlement amount totaling One Million, Seven Hundred and Fifty Thousand dollars (\$1,750,000), of which Three Hundred and Ninety Thousand Dollars (\$390,000) shall be paid by Defendant in full settlement of the Released Claims asserted in this Action. The additional One Million, Three Hundred and Sixty Thousand Dollars has already been distributed to some class members in individual settlements. This Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments of: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to Plaintiff, as approved by the Court; (4) Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees (which amount includes all Individual PAGA Payments), and (6) any and all employee-side taxes, as approved by the Court. The Gross

Settlement Amount is non-reversionary to Defendant and shall be paid without the need to submit a claim form.

- W. **Individual PAGA Payment(s)**: The amount payable to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employee under the terms of this Agreement. Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment.
- X. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Agreement shall come from the Net Settlement Amount only and shall include employee-side taxes withheld by the Settlement Administrator as required by law. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement.
- Y. **LWDA**: California Labor and Workforce Development Agency.
- Z. **Net Settlement Amount or NSA**: The Gross Settlement Amount less the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs.
- AA. **Notice Packet**: The Class Notice and Exclusion Form.
- BB. **Opt-Outs**: A Class Member who submits a valid and timely Exclusion Form.
- CC. **PAGA**: The Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 *et seq.*)
- DD. **PAGA Action**: The putative representative PAGA cause of action that was asserted by Plaintiff in his Complaint.
- EE. **PAGA Notice**: The PAGA Notice refers to the pre-filing notice of Labor Code violations served by Plaintiff on the LWDA on July 20, 2021.
- FF. **PAGA Payment**: The PAGA Payment consists of \$60,000 from the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the PAGA Action. Seventy-five percent (75%) of the PAGA Payment (\$45,000) shall be paid to the LWDA, and twenty-five percent (25%) (\$15,000) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro-rata basis, as set forth below.
- GG. **PAGA Period**: The period between July 21, 2020, to the date of Preliminary Approval.

- 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 underlying Labor Code violations that were or reasonably could have been alleged in the Complaints and the PAGA Notice 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, 221, 226, 226.3, 226.7, 245, 246, 247, 248, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
- II. PAGA Released Parties:** Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, attorneys..
- JJ. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the Class Action Settlement and who will have released the Released Claims.
- KK. Parties:** Plaintiff on behalf of himself, the Class Members, the Eligible Aggrieved Employees, and the State of California, on the one hand, and Defendant.
- LL. Preliminary Approval or Preliminary Approval Order:** The Court's order (1) preliminarily certifying the Class solely for the purpose of effectuating the Agreement; (2) preliminarily approving the terms and conditions of this Agreement; (3) appointing Class Counsel as defined above; (4) directing the manner and timing of providing Notice Packet to the Class Members; and (5) setting dates to effectuate the terms of this Agreement, including the date of the Final Approval hearing, and incorporated by reference into this Agreement.
- MM. Qualified Settlement Fund or QSF:** A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. section 1.468B-1, *et seq.*, that is established by the Settlement Administrator, pursuant to the terms and conditions of this Agreement, for maintenance and distribution of the Gross Settlement Amount for the benefit of Participating Class Members, LWDA, Eligible Aggrieved Employees, Plaintiff and Class Counsel.
- NN. Released Claims:** The released claims means all causes of action and factual or legal theories that were alleged in the Complaints or reasonably could have been alleged in the Complaints on Plaintiff's or any Class Member's behalf based on the facts and legal theories contained in the Complaints, including, but not limited to, all of the following causes of action: (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; and (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 (collectively, the “Released Claims”). The *res judicata* effect of the Final Approval will be the same as that of the Release.

OO. Released Parties: Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys.

PP. Response Deadline: Forty-five (45) calendar days from the initial mailing of the Notice Packet; provided, however, that if a Notice Packet is remailed to a Class Member, such Class Member will have an additional ten (10) days—for a total of fifty-five (55) calendar days from the initial mailing of the initial Notice Packet—opt-out of this Agreement or file and serve an objection to the Settlement.

QQ. Settlement Administrator: The third-party administrator agreed upon by Parties to administer this Settlement is Rust Consulting, subject to approval by the Court.

II. RECITALS

A. July 21, 2020, Plaintiff provided written notice on behalf of himself and other allegedly aggrieved employees to the LWDA and Defendant. On October 13, 2021, Plaintiff filed the Action that alleged ten (10) causes of action.

During the interim between the filing of the Complaint and the mediation, Defendant contacted individual class members and offered to settle with them on an individual basis. In total, Defendant paid \$1,360,000 to these individuals.

On August 10, 2022, the Parties attended mediation with wage-and-hour mediator, The Honorable Andrew J. Guilford, but were unable to reach a resolution that day. On August 15, 2022, after continued negotiations with the assistance of the mediator, the Parties were ultimately able to reach a global resolution of the Action and PAGA Action. On November 11, 2022, Plaintiff amended their PAGA letter and provided written notice on behalf of himself and other allegedly aggrieved employees to the LWDA and Defendant, and filed an amended complaint in the Superior Court of California for the County of Orange (“First Amended Complaint”).

- B. Discovery and Investigation.** The Parties conducted significant investigation and discovery of the facts and law both before and after the Action and PAGA Action was filed. Prior to mediation, Defendant produced documents relating to its policies, practices, and procedures regarding paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendant’s production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, the size and scope of the group of Eligible Aggrieved Employees, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period and PAGA Period. Defendant also provided Plaintiff with information regarding the number of individuals who settled portions of their class claims in individual settlements. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis.
- C. Benefits of Settlement to Class Members, the LWDA, and the Eligible Aggrieved Employees.** The Parties believe this Agreement constitutes a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement in arms-length negotiations, considering all relevant factors, present and potential, and will so represent to the Court. This Agreement also represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff, the Class or the Eligible Aggrieved Employees have merit or that Defendant bears any liability to Plaintiff, the Class or the Eligible Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification for any reason and reserve all available defenses to the claims in the Action.

- D. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest, the Released Claims and the PAGA Released Claims.
- E. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action and PAGA Action are not appropriate for class or representative treatment. Defendant asserts several defenses to the claims and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action and PAGA Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties or any of the PAGA Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only. This Agreement is a compromise of claims disputed in good faith. The monies being paid as part of the Settlement are genuinely disputed, and the Parties agree that the provisions of Labor Code § 206.5 are not applicable to this Settlement.
- F. Plaintiff's Claims.** This Agreement is a compromise of disputed claims. The monies being paid as part of the Settlement are genuinely disputed, and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, the LWDA, Eligible Aggrieved Employees, Class Members, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiff, the Class Members, the LWDA, and the Eligible Aggrieved Employees have resolved and are forever barred from re-litigating the Released Claims and PAGA Released Claims, as applicable.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding employer payroll taxes, that Defendant will pay under this Agreement is an additional Three Hundred Ninety Thousand Dollars (\$390,000). This amount is in

addition to monies paid to some individual class members prior to the mediation. This amount is all-inclusive of all payments contemplated in this resolution, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant. All the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (1) the Released Claims, (2) Attorney Fee Award, (3) the Cost Award, (4) the Administration Costs, (5) the Class Representative Enhancement Payment, (6) the PAGA payment, and (7) any other obligation of Defendant under this Agreement (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement. Should the Settlement not become final and effective as herein provided, class certification shall immediately be set aside, and the Settlement Class immediately decertified (subject and without prejudice to further proceedings on motion of any Party to certify or deny certification thereafter).
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether any arbitrator or court, including this Court, should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification, liability, and damages.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, and without prejudice to Defendant asserting that Plaintiff is not an adequate class representative in this or any other proceeding or in an event this Settlement does not become final and effective as provided herein, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.

F. Settlement Disbursement. Subject to the terms and conditions of this Agreement and the approval of the Court, the Settlement Administrator will disburse the Gross Settlement Amount as follows:

- 1. To the Plaintiff, Ricardo Alexander Ocampo.** In addition to his respective Individual Settlement Share, and subject to the Court's approval and Plaintiff's execution of the general release as set forth herein, Plaintiff will receive up to Ten Thousand Dollars (\$10,000 as a Class Representative Enhancement Payment. Defendant will not oppose Class Representative Enhancement Payment of no more than \$10,000 for the Plaintiff. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount in the Qualified Settlement Fund. Payroll tax withholdings and deductions will be taken from 50% of Class Representative Enhancement Payment. For the remaining 50%, an IRS Form 1099 will be issued to Plaintiff for that amount. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on the 50% portion of the Class Representative Enhancement Payment that is not subject to taxes and withholdings. Plaintiff will hold harmless Defendant, the PAGA Released Parties, and the Released Parties from any claim or liability for taxes, penalties, or interest arising because of the Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards out of the Gross Settlement Amount in the Qualified Settlement Fund, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount approved by the Court. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and will be distributed to Participating Class Members in accordance with the terms of this Agreement. If the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to modify or revoke the Settlement, and it will remain binding, nor will Plaintiff seek, request, or demand an increase in the Gross Settlement Amount on that basis.
- 2. To Class Counsel.** Class Counsel will apply to the Court for a total Attorney Fee Award not to exceed [One Hundred and Thirty Thousand or \$130,000] of the Gross Settlement Amount and a Cost Award not to exceed \$20,000 for all expenses incurred as documented in Class Counsel's billing records. Defendant will not oppose Class Counsel's request for an Attorney Fee Award and Cost Award consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount in the Qualified Settlement Fund. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. Class Counsel

shall be solely and legally responsible for paying all applicable taxes on the Attorney Fee Award and Cost Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards from the GSA in the Qualified Settlement Fund, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and will be distributed to Participating Class Members in accordance with the terms of this Agreement. The Parties agree that over and above the Court-approved Attorney Fee Award and Cost Award, each of the Parties, including all Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or Settlement of the Class Action and PAGA Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering or challenging the Preliminary Approval Order and/or Final Approval. In the event that the Court reduces or does not approve the requested Attorney Fee Award and Cost Award, and/or if the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, or to appeal such order, and the Settlement will remain binding, nor will Plaintiff or Class Counsel seek, request, or demand an increase in the Gross Settlement Amount on that basis.

3. **To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of each Participating Class Member's portion of normal payroll withholding taxes out of each Participating Class Member's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and shall forward those amounts withheld to the appropriate taxing authorities.
4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$13,000. This will be paid out of Gross Settlement Amount in the Qualified Settlement Fund. If the actual amount of Administration Costs are less than the amount estimated and/or requested, the difference shall become part of the Net Settlement Amount and will be distributed to Participating Class Members in accordance with the terms of this Agreement.

5. To Participating Class Members. The Settlement Administrator will pay each Participating Class Member the Class Member's Individual Settlement Share from the Net Settlement Amount.

a. Individual Settlement Share Calculation. The Individual Settlement Share is calculated based on each Participating Class Member's pro-rata share of the Net Settlement Amount 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 the State of 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. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Participating Class Member based on their dates of employment for purposes of this calculation.

b. Tax Treatment for Individual Settlement Shares. Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) wages (the "Wage Portion") and eighty percent (80%) interest, penalties, and reimbursements (collectively the "Non-Wage Portion"). The Wage Portion shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Subject to requirements of applicable law, payment of all amounts subject to withholdings will be made subject to backup withholding. Payroll tax withholding and deductions will not be taken from the Non-Wage Portion and instead a Form 1099 will be issued to each of the Participating Class Member, who will assume full responsibility and liability for the taxes due on their Non-Wage Portion of their Individual Settlement Shares and shall hold Defendant harmless from any and all liability with regard thereto. Participating Class Members will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

6. To Eligible Aggrieved Employees. The Settlement Administrator shall pay each Eligible Aggrieved Employee the Eligible Aggrieved Employee's Individual PAGA Payment from the PAGA Payment, according to the terms of this Agreement, including as follows:

a. Individual PAGA Payment Calculation. The Individual PAGA Payment is calculated based on each Eligible Aggrieved

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

- b. Tax Treatment for Individual PAGA Payments.** Each Eligible Aggrieved Employee's Individual PAGA Payments will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments.

- 7. Effect of Opt-Outs.** Opt-Outs will receive no Individual Settlement Shares, and their Exclusion Form will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Individual Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.

- G. Appointment of Settlement Administrator.** The Settlement Administrator shall be responsible for the following: (a) preparing, printing, and mailing the Notice Packet to the Class Members; (b) translating the Notice Packet into Spanish; (c) keeping track of any objections or requests for exclusion from Class Members; (d) performing skip traces and remailing Notice Packets and Individual Settlement Shares to Class Members; (e) calculating any and all payroll tax deductions as required by law; (f) calculating each Class Member's Individual Settlement Share; (g) calculating Eligible Aggrieved Employees' Individual PAGA Payment; (h) providing weekly status reports to Counsel for Defendant and Class Counsel, which is to include prompt updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; (i) mailing Individual Settlement Shares to Participating Class Members; mailing Individual PAGA Payments to Eligible Aggrieved Employees; (j) mailing the portion of the PAGA Payment to the LWDA;

(k) distributing the Attorney Fee Award and Cost Award to Class Counsel; (l) printing and providing Class Members, Eligible Aggrieved Employees and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; (m) providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; (n) providing any funds remaining in the QSF as a result of uncashed checks to the *cy pres* recipient, including the administration of related tax reimbursements; and (o) performing such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. The Parties agree to undertake good faith efforts to ensure that the Settlement Administrator indemnifies the Parties and counsel regarding any improper handling of Settlement Administrator's responsibilities, including the handling of any tax-related matters. The Parties will have equal access to the Settlement Administrator throughout the claims administration period.

H. CIRCULAR 230 DISCLAIMER. Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
- (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

I. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. No later than fourteen (14) days after the execution of this agreement, Plaintiff will, in accordance with the terms and

conditions of this Agreement, file a motion with the Court for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, approving the Notice Packet and Exclusion Form, and seeking Court approval of the PAGA Action settlement.

- b. At the Preliminary Approval hearing, Plaintiff will, in accordance with the terms and conditions of this Agreement, appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice Packet; setting the Final Approval hearing; and approving the PAGA Action settlement.
- c. If the Court declines to conditionally certify the Class or to issue a Preliminary Approval of the Settlement consistent with the terms of this Agreement, or if the Court does not approve the PAGA Action settlement consistent with the terms of this Agreement, this Agreement will be null and void, and the Parties will have no further obligations under it, except if the Court declines to enter the Preliminary Approval due solely to the amount of requested Attorney Fee Award and Cost Award. This Agreement is not contingent upon approval by the Court of Class Counsel's application for the Attorney Fee Award or Cost Award, and if the Court approves all payments pursuant to this Agreement except for the application for the Attorney Fee Award or Cost Award, the Parties will remain bound by this Agreement and any Court-required reduction of the attorneys' fees and costs will be reallocated to Participating Class Members as part of the Net Settlement Amount.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

- a. Within fifteen (15) business days after entry of the Preliminary Approval, Defendant shall deliver the Class Data to the Settlement Administrator.
- b. Upon receipt of the Class Data, the Settlement Administrator will use all commercially reasonable means to confirm Class Members' addresses and obtain new addresses, as necessary. The Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or

identifiable address changes. The Settlement Administrator shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. The Settlement Administrator shall not distribute or use the Class Data, or any information contained therein, for any purpose other than to administer this Settlement.

- c. Within fourteen (14) business days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class U.S. Mail.
- d. If a Notice Packet is returned because of an incorrect address, within ten (10) days from receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and remail the Notice Packet to the Class Member. The Settlement Administrator will use the National Change of Address Database and up to two (2) skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address, and promptly remailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be remailed to the original address. If the Notice Packet is remailed, the Settlement Administrator will note for its own records the date and address of each remailing. Those Class Members who receive a remailed Notice Packet, whether by skip-trace or forwarded mail, will have an additional ten (10) days to postmark an Exclusion Form, or file and serve an objection to the Settlement. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a remailed notice.
- e. Class Members may dispute the information provided in their Notice Packet but must do so in writing and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement Administrator will jointly work with the Parties to resolve the dispute in good faith. Defendant's records will be presumed determinative, unless the

Class Member produces payment stubs, wage statements or other documents which conflict with Defendant's records. If the Parties cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendant.

- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendant of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed, and the number of Exclusion Forms received.
- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement.

- a. **Notice Packet.** The Notice Packet will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- b. **Format.** Any written objections shall state: (1) the objecting person's full name, address, and telephone number; (2) the words "Notice of Objection" or "Formal Objection;" (3) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (4) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (5) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The Parties may file written responses to any filed objections in the motion for Final Approval.
- c. **Objector Appearances.** Participating Class Members may (though are not required to) appear at the Final Approval hearing, either in person or through the objector's own counsel. The failure

to file and serve a written objection does not waive a Participating Class Member's right to appear at and make an oral objection at the Final Approval hearing.

- d. Fees.** Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel or Participating Class Members arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

4. Request for Exclusion from the Settlement ("Opt-Out").

- a. Notice Packet.** The Notice Packet will provide that Class Members who wish to exclude themselves from the Class Action Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (1) include the Class Member's name, address, and last four digits of the social security number; (2) be addressed to the Settlement Administrator; (3) be signed by the Class Member; and (4) be postmarked no later than the Response Deadline.
- b. No Opt Out From PAGA.** Eligible Aggrieved Employees will not be able to exclude themselves from receiving their portion of the PAGA Payment.
- c. Validity and Effect.** Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Class Action settlement and Final Approval and will not receive an Individual Settlement Share. Notwithstanding the foregoing, to the extent the Class Member is also an Eligible Aggrieved Employee, the Class Member's timely opt-out of the Class Action settlement will not affect the Class Member's participation in the PAGA Action settlement and the Class Member will receive Class Member's Individual PAGA Payment as set forth in this Agreement. A Class Member who does not complete and mail a timely Exclusion Form will be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Final Approval, regardless of whether he or she has objected to the Settlement.
- d. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed to Class Members, the number of remailed Notice Packets

returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion. The Settlement Administrator shall continue to provide weekly reports, as outlined in section III.I.2.f of this Agreement.

- e. **Defendant's Option to Terminate.** If more than ten percent (10%) of the Class Members submit Exclusion Forms, Defendant, at its sole option and by written notice to Class Counsel, may terminate the Settlement, rendering this Agreement null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement, except that the Parties shall pay an equal portion for the Settlement Administrator's Administration Costs through the date this Agreement becomes null and void. Defendant must exercise this option by informing Class Counsel no later than five business days after the expiration of the Response Deadline. If Defendant exercise this option, Defendant shall be solely responsible for Settlement Administration costs incurred up to that date.

- 5. **No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel or agents will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Final Approval.

6. Motion for Final Approval.

- a. Class Counsel will file unopposed motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administration Costs; (4) the Class Representative Enhancement; (5) PAGA Payment, and (6) the Individual Settlement Shares from the Net Settlement Amount. Class Counsel will also move the Court for an order of Final Approval releasing and barring any Released Claims of the Participating Class Members and the PAGA Released Claims of the Eligible Aggrieved Employees.
- b. If the Court does not grant Final Approval of the Settlement or grants Final Approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be

granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Enhancement, the Attorney Fee Award, or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph. Notwithstanding anything to the contrary, an award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a denial of Final Approval, a material modification to the Settlement, or a Final Approval inconsistent with the terms of this Agreement within the meaning of this paragraph.

- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement. After entry of Final Approval, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Final Approval matters as may be appropriate under Court rules and applicable law.

- 7. **Waiver of Right to Appeal.** Provided that the Final Approval is consistent with the terms and conditions of this Agreement (except for any Final Approval inconsistent solely with Class Counsel's request for Attorney Fee Award and/or Cost Award), if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Final Approval, including, but not limited to, all rights to any post-Final Approval proceeding and appellate proceeding, such as a motion to vacate or set aside the Final Approval, and any extraordinary writ, and the Final Approval will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-Final Approval proceeding.
- 8. **Vacating, Reversing, or Modifying Final Approval on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Final Approval such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Final Approval is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.

9. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Counsel for Defendant and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendant and Class Counsel. No person shall have any claim against Defendant, Counsel for Defendant, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** No later than fourteen (14) business days after the Effective Final Settlement Date, Defendant shall provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Shares. No later than twenty-one (21) business days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Three Hundred Ninety Thousand Dollars (\$390,000) needed to pay the entire GSA by wiring the funds to the Settlement Administrator as well as any additional sums necessary to account for the employers' share of payroll taxes.
- b. **Disbursement:** Within fourteen (14) calendar days after the deadline to fund of the Settlement as set forth at section III.I.9.a. of this Agreement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. As of the Effective Final Settlement Date, PAGA Released Parties shall have no liability for PAGA Released Claims by or on behalf of Eligible Aggrieved Employees or the LWDA, which are released under this Agreement, and Released Parties shall have no liability for the Released Claims by or on behalf of Plaintiff and/or Participating Class members, which are released under this Agreement.
- c. **QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations section 1.468B-1, 26 C.F.R. section 1.468B-1 *et seq.*,

and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

10. Uncashed Checks. Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, to the *cy pres* recipient Legal Aid at Work.

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

12. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

J. Release of Claims. As of the Effective Final Settlement Date, except as to such rights or claims as may be created by this Agreement, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members, on their own behalf, and on behalf of their respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, release the Released Parties from the Released Claims for the Class Period. The Plaintiff and Participating Class Members shall be deemed to have, and, upon Defendant's fully funding of the Settlement and by operation of the Final Approval, shall have, fully, finally, and forever settled and released all of the Released Claims as defined in this Agreement. The Parties further acknowledge, understand and agree that this release is a material part of the consideration for this Agreement; was critical in justifying the agreed-upon economic value of this Settlement, and without it Defendant would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts and legal theories contained in the Complaint.

1. Participating Class Members. Upon the Effective Date, each Settlement Participant shall release Defendant and the Released Parties, and each of them, from the Released Claims. Each Settlement Participant will be bound to the release of Released Claims as a result of the Settlement and to the terms of the final judgment and the satisfaction of such judgment. It is understood and agreed that this Agreement will not release any person, party or entity from claims, if any, by Class Members for workers' compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the Fair Employment and Housing Act, the Government Code sections 12940, *et seq.*; the Unruh Civil Rights Act, the Civil Code sections 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. sections 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. sections 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. sections 1001, *et seq.*; and all of their implementing regulations and interpretive guidelines, or any other law which cannot be lawfully released. Class Members who do not opt out will be deemed to have acknowledged and agreed that the Settlement payments constitute payment of all sums allegedly due to them.

2. State of California. Defendant shall receive a release from the State of California of all PAGA claims for civil penalties under Labor Code sections 2698, *et seq.*, predicated on the violations of the applicable Labor Code sections and applicable Wage Orders as alleged in the LWDA Notices submitted by Plaintiff and the operative Complaint which occurred during the PAGA Period ("PAGA Released Claims"). The PAGA Released Claims may be released against all Released Parties. The PAGA Released Claims exclude any PAGA claims outside the PAGA Period. The release of the PAGA Released Claims shall be effective as to all Eligible Aggrieved Employees, regardless of whether an Eligible Aggrieved Employee submitted a request for an exclusion from the Class. The PAGA Released Claims do not include other PAGA claims, underlying wage-and-hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

K. PAGA Release. As of the Effective Final Settlement Date, all Eligible Aggrieved Employees and the State of California, including the LWDA, on their own behalf, and on behalf of their respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, fully, finally, and forever be barred from seeking any claims for penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period against PAGA Released Parties. The *res judicata* effect of the Final Approval will be the same as that of the PAGA Release.

L. Plaintiff's Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiff in an amount not to exceed Ten Thousand Dollars and No Cents (\$10,000), in recognition of his work and effort in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for himself and his spouses, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but he expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

M. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Class and PAGA Actions, or that but for the Settlement, a Class should be certified in the Class Action or that the PAGA Action could proceed on a representative basis. This Agreement is entered solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement

and Plaintiff's and Defendant's willingness to settle the Class and PAGA Actions will have no bearing on, and will not be admissible in connection with, any litigation, administrative proceeding or other special proceeding (other than solely in connection with this Settlement).

- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payments, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members or Eligible Aggrieved Employees. The Parties agree that any Class Representative Enhancement, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's, Participating Class Members' or Eligible Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. Publicity.** Class Counsel and Plaintiff agree to publicly discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel for purposes of this Settlement Agreement, in declarations submitted to a court in support of motions for Preliminary Approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree to decline to respond to any media inquiries concerning the Settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Counsel for Defendant warrant and represent that they are authorized by Plaintiff and Defendant to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and

use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach an agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class and PAGA Actions in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

13. No Tax or Legal Advice. The Parties understand and agree the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Plaintiff, Class Counsel, Eligible Aggrieved Employees and Participating Class Members will assume any such tax obligations or consequences that may arise from any disbursements made under this Agreement, and that Plaintiff, Class Counsel, Eligible Aggrieved Employees and Participating Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.

14. Jurisdiction of the Superior Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders in connection therewith.

15. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement other than Plaintiff's, Class Members', and the LWDA's release of claims, as set forth herein, is found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

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

17. 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 or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. VOLUNTARY NATURE OF AGREEMENT

The Parties understand and agree that they executed this Agreement voluntarily and without any duress or undue influence on the part or behalf of one another or any third party, with the full intent of releasing all of claims released herein. The Parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice;
- (c) They understand the terms and consequences of this Agreement and of the releases it contains;
- (d) They are fully aware of the legal and binding effect of this Agreement; and
- (e) They have not relied upon any representations or statements made by one another that are not specifically set forth in this Agreement.

V. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

12/15/2022
Dated: _____, 2022

RICARDO ALEXANDER OCAMPO



Dated: 12/15/22, 2022

NOR-CAL BEVERAGE CO., INC.



Shannon Deary-Bell, CEO

12/15/2022
Dated: _____, 2022

POTTER HANDY LLP



James M. Treglio, Esq.
Attorneys for Plaintiff Ricardo Alexander Ocampo,
individually and on behalf of all others similarly
situated

12 / 16 / 2022
Dated: _____, 2022

GREENBERG TRAURIG LLP



Ellen Bronchetti, Esq.

Attorneys for Nor-Cal Beverage Co., Inc.