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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BENITO**

13 KATRINA TRESTER and ABIGAIL PEREZ-
TELLEZ, individually, and on behalf of aggrieved
employees pursuant to the Private Attorneys
14 General Act ("PAGA"),

15 Plaintiffs,

16 v.

17 DELICATO VINEYARDS, a California
corporation; and DOES 1 through 100, inclusive,

18 Defendants.
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Case No. CU-22-00016

Honorable J. Omar Rodriguez -[Dept. 1]

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

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employees

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SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

This Settlement Agreement and Release of PAGA Claims (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs Katrina Trester and Abigail Perez-Tellez (“Plaintiffs”), as individuals and on behalf of PAGA Members and the State of California, and Defendant Delicato Vineyards, LLC (“Defendant”) (collectively, the “Parties”).

1. DEFINITIONS

As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

1.1. “**Action**” means *Katrina Trester and Abigail Perez-Tellez v. Delicato Vineyards*, San Benito County Superior Court, Case No. CU-22-00016.

1.2. “**Attorneys’ Costs**” means the litigation costs payment from the Gross Settlement Amount and approved by the Court for Plaintiffs’ Counsel’s costs associated with the litigation and resolution of the Action, including but not limited to all recoverable costs that Plaintiffs or Plaintiffs’ Counsel incur for the prosecution and litigation of the Action. It is agreed by the Parties that Plaintiffs’ Counsel shall request attorneys’ costs not to exceed \$25,000. Plaintiffs’ Counsel shall submit adequate documentation to support the amount of costs sought. Defendant agrees not to oppose Plaintiffs’ Counsel’s request for costs.

1.3. “**Attorneys’ Fees**” means attorneys’ fees agreed upon by the Parties and approved by the Court for Plaintiffs’ Counsel’s litigation and resolution of the Action, including but not limited to securing the Court’s approval of the Settlement and obtaining an entry of a Judgement dismissing the Action. It is agreed by the Parties that Plaintiffs’ Counsel shall request attorneys’ fees not to exceed 38% of the Gross Settlement Amount, supported by adequate documentation to support the amount of fees sought. Defendant agrees not to oppose Plaintiffs’ Counsel’s request for Attorneys’ Fees.

1.4. “**Enhancement Awards**” means the amount paid to Plaintiffs in recognition of their effort and work in prosecuting the Action on behalf of PAGA Members and the State of California, and for their General Release of Claims against Released Parties. It is agreed by the Parties that Plaintiffs’ Counsel shall request Enhancement Awards in an amount not to exceed \$20,000, with \$10,000 paid to

each Plaintiff. Defendant has agreed not to oppose Plaintiffs' Counsel's request for Enhancement Awards.

1.5. **"Court"** means the San Benito County Superior Court.

1.6. **"Defendant"** means Delicato Vineyards, LLC.

1.7. **"Defendant's Counsel"** refers to Mike J. Burns, Andrew M. McNaught, and Claire Y. Chang of Seyfarth Shaw LLP. For purposes of providing any notices required under this Settlement Agreement, Defendant's Counsel shall be notified by email at: amcnaught@seyfarth.com for Andrew M. McNaught; and cchang@seyfarth.com for Claire Y. Chang.

1.8. **"Effective Date"** means the date upon which both of the following have occurred: (i) approval of the settlement is granted by the Court, or other court assuming jurisdiction of this Action, and (ii) the Court's Judgment approving the settlement becomes Final. "Final" shall mean the latest of: (1) the California Court of Appeal, the California Supreme Court, or the U.S. Supreme Court has rendered a final judgment affirming the Court's approval without material modification; or (2) the applicable date for seeking appellate review of the Court's approval of the Settlement, or any appellate decision on an appeal from the Court's approval of the Settlement, has passed without a timely appeal or request for review having been made.

1.9. **"Gross Settlement Amount"** means the entire amount that is allocated towards the resolution of the Action, in an amount not to exceed Five Hundred and Ninety Five Thousand Dollars (\$595,000) to be paid by Defendant pursuant to this Settlement Agreement. The Gross Settlement Amount is fully inclusive of all Individual Settlement Share, Attorneys' Fees, Attorneys' Costs, the Enhancement Awards, the LWDA Fund, and the Settlement Administration Costs. In no event will Defendant be liable for more than the Gross Settlement Amount, except for the triggering of the Escalation Clause in paragraph 4.1.1.

1.10. **"Individual Settlement Share"** means the amount payable to each PAGA Member. Each PAGA Member shall be entitled to a share of the Net Settlement Amount, determined by the total number of pay periods worked by the PAGA Member during the PAGA Period divided by the total pay periods worked by all PAGA Members during the PAGA Period, then multiplied by the Net

1 Settlement Amount. Each PAGA Member's total number of pay periods worked shall be determined
2 based on Defendant's records for PAGA Members during the PAGA Period.

3 1.11. "**LWDA**" refers to California Labor and Workforce Development Agency.

4 1.12. "**LWDA Fund**" means Seventy-Five Percent (75%) of the PAGA Fund, or up to
5 \$231,645 that will be paid to the LWDA under California Labor Code § 2699(i).

6 1.13. "**Net Settlement Amount**" means Twenty-Five Percent (25%) of the PAGA Fund, or up
7 to \$77,255 that will be distributed to PAGA Members.

8 1.14. "**Notice of Settlement**" means the Notice of Settlement, substantially in the form
9 attached as Exhibit A.

10 1.15. "**PAGA**" refers to the California Private Attorneys General Act of 2004, California Labor
11 Code Sections 2698 *et seq.*

12 1.16. "**PAGA Fund**" means the amount that the Parties have agreed to pay to the LWDA and
13 PAGA Members in connection with this Action. The Parties have agreed that the PAGA Fund shall be
14 the remaining of Gross Settlement Amount, after deducting the court-approved 1) Attorneys' Fees, (2)
15 Attorneys' Costs, (3) Enhancement Awards, and (4) Settlement Administrator's costs.

16 1.17. "**PAGA List**" means a list of PAGA Members that Defendant will compile and provide
17 to the Settlement Administrator within twenty-one (21) calendar days after the Court issues an approval
18 order of the Settlement. The PAGA List shall be provided in electronic form and include the following
19 information: (1) name of each PAGA Member; (2) the employee identification number of each PAGA
20 Member; (3) the most current, known mailing address and telephone number (if available) of each
21 PAGA Member; (4) the number of pay periods worked by each PAGA Member during PAGA Period;
22 and (5) the social security number for each PAGA Member.

23 1.18. "**PAGA Members**" means all current and former non-exempt or hourly-paid employees
24 directly employed by Defendant and who worked for Defendant in California from November 22, 2020
25 through the date of the approval of the Settlement or November 13, 2022, whichever date is earlier.

26 1.19. "**PAGA Period**" means the period from November 22, 2020 through the date of approval
27 of the Settlement or November 13, 2022, whichever date is earlier.
28

1 1.20. **“Plaintiffs’ Counsel”** refers to Douglas Han, Shunt Tatavos-Gharajeh, and John
2 Bickford of Justice Law Corporation. For purposes of providing any notices required under this
3 Settlement Agreement, Plaintiffs’ Counsel shall be notified by email at dhan@justicelawcorp.com for
4 Douglas Han, statavos@justicelawcorp.com for Shunt Tatavos-Gharajeh, and
5 jbickford@justicelawcorp.com for John Bickford.

6 1.21. **“Released Claims”** shall mean any and all claims, rights, demands, liabilities, and
7 causes of action, whether known or unknown, that were asserted or could have been asserted based on
8 any theory of recovery alleged in the Action for violation of the underlying Labor Code sections asserted
9 through the California Private Attorneys General Act of 2004, §§2698, *et seq.*, which occurred during
10 the PAGA Period, and any remedies for any of the claims described herein, including penalties,
11 restitution, declaratory relief, equitable or injunctive relief, interests, and attorneys’ fees and costs.

12 1.22. **“Released Parties”** means Defendant, and/or any of its current and former parents,
13 successors, predecessors, affiliates, subsidiaries and related entities, and any of their current or former
14 officers, directors, members, shareholders, managers, human resources representatives, employees,
15 agents, contractors, insurance carriers, representatives, or attorneys.

16 1.23. **“Settlement Administrator”** means Phoenix Class Action Settlement Administrator or
17 any other third-party representative action settlement administrator agreed to by the Parties and
18 approved by the Court for the purposes of administering this Settlement. The Parties each represent that
19 they do not have any financial interest in the Settlement Administrator or otherwise have a relationship
20 with the Settlement Administrator that could create a conflict of interest.

21 1.24. **“Settlement Administration Costs”** means the costs payable from the Gross Settlement
22 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
23 printing, translating, distributing, and tracking documents for this Settlement, tax reporting, distributing
24 the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the
25 Parties. The Settlement Administration Costs will be paid from the Gross Settlement Amount, including,
26 if necessary, any such costs in excess of the amount represented by the Settlement Administrator as
27 being the maximum costs necessary to administer the Settlement.
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1 **2. PROCEDURAL HISTORY AND RECITALS**

2 **2.1. The Action**

3 2.1.1. On August 30, 2021, Plaintiffs' Counsel sent a letter to the LWDA on behalf of
4 Plaintiff Katrina Trester. On September 3, 2021, Plaintiffs' Counsel sent a letter to the LWDA on behalf
5 of Plaintiff Abigail Perez-Tellez.

6 2.1.2. On January 26, 2022, Plaintiffs filed a representative action complaint asserting a
7 single cause of action for civil penalties under PAGA. Plaintiffs seek civil penalties based on
8 Defendant's alleged (1) failure to pay minimum wages and overtime wages in violations of California
9 Labor Code §§ 510, 1194, 1197, and 1198; (2) failure to provide paid sick leave in violation of Labor
10 Code § 246; (3) failure to provide meal and rest breaks in violations of Labor Code §§ 226.7 and 512;
11 (4) failure to timely pay wages during employment in violation of Labor Code § 204; (5) failure to
12 timely pay wages upon termination in violations of Labor Code §§ 201-204; (6) failure to provide
13 complete and accurate wage statements in violations of Labor Code §§ 226 and 1174; and (7) failure to
14 reimburse business expenses in violation of Labor Code §§ 2800 and 2802. Plaintiffs bring their PAGA
15 action on behalf of themselves and "aggrieved employees" who worked at Delicato's facilities in
16 California during relevant time period.

17 2.2. **The Settlement Is The Result Of Arms' Length Negotiations.** On August 13, 2022, the
18 Parties attended private mediation with well-known mediator, Eve Wagner, Esq. and reached a
19 settlement to resolve this Action. This Settlement was reached after Plaintiffs' Counsels' thorough
20 investigation and evaluation of the Action, and the extensive arm's-length negotiations between
21 Plaintiffs' Counsel and Defendant's Counsel that were made in light of all known facts and
22 circumstances, including the risks of significant delay and uncertainty associated with protracted
23 litigation, the risk that the Action would not be subject to representative treatment, the various defenses
24 asserted by Defendant, and the numerous potential appellate issues. Based on Plaintiffs' Counsel's
25 investigation and evaluation, Plaintiffs' Counsel is of the opinion that the terms set forth in this
26 Settlement Agreement are fair, reasonable, adequate, and in the best interests of PAGA Members.

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1 **3. NON-ADMISSION OF LIABILITY**

2 3.1.1. Defendant denies and continues to deny all of the allegations made by Plaintiffs in
3 the Action and denies and continues to deny that it is liable or owe any damages, penalties, or other
4 compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action.
5 Defendant denies any liability or wrongdoing of any kind in connection with Plaintiffs' claims, and
6 contends that, during all relevant time periods, it complied in all respects with applicable state and
7 federal laws and regulations. Nonetheless, without admitting or conceding any liability or damages
8 whatsoever, and without admitting that a representative action is appropriate except for settlement
9 purposes alone, Defendant has agreed to settle the Action on the terms and conditions set forth in this
10 Settlement Agreement, to avoid the burden, expense, and uncertainty of continued litigation.

11 3.1.2. The Parties understand and agree that this Settlement Agreement and any exhibits
12 thereto are settlement documents and shall be inadmissible for any purpose in any proceeding, except an
13 action or proceeding to approve, interpret, or enforce the terms of this Settlement Agreement. The
14 Parties agree that, to the extent permitted by law, this Settlement Agreement may be pleaded as a full
15 and complete defense to, and may be used as the basis for an injunction against any action, suit, or other
16 proceeding that may be instituted, prosecuted, or attempted in breach of this Settlement Agreement.

17 **4. COMPUTATION AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

18 4.1. **Funding of Gross Settlement Amount.** Defendant shall deposit into an interest bearing
19 escrow account with the Settlement Administrator the Gross Settlement Amount, within seven (7)
20 calendar days after the Effective Date, or as otherwise directed by the Court.

21 4.1.1. **Escalation Clause.** Defendant estimates there will be approximately 26,000 pay
22 periods during the PAGA period. Defendant further agrees that the total number of pay periods will not
23 exceed 28,600—*i.e.*, more than 10% of 26,000. In the event that the number of pay periods exceed
24 28,600 (more than 10%), the Gross Settlement Amount shall increase proportionally for the number of
25 pay periods over 28,600.

26 4.2. **Enhancement Awards.** Plaintiffs' Counsel intends to request—and Defendant does not
27 oppose—that the Court approve Enhancement Awards of \$20,000, with \$10,000 for each Plaintiff and
28

1 such payments shall not be subject to payroll taxes or withholdings. The Enhancement Awards are in
2 addition to Plaintiffs' Individual Settlement Shares.

3 4.2.1. **Approval of Enhancement Awards Is Not Material.** The Court's approval of
4 the Enhancement Awards is not a material term this Settlement Agreement. If the Court does not
5 approve or approves only a lesser amount than that requested by Plaintiffs' Counsel, the other terms of
6 this Settlement Agreement shall apply. The Court's refusal to approve the Enhancement Awards as
7 requested by Plaintiffs' Counsel does not give Plaintiffs, PAGA Members, or Plaintiffs' Counsel any
8 basis to abrogate this Settlement. Any amount of the Enhancement Awards as requested by Plaintiffs'
9 Counsel but unapproved by the Court shall be allocated to the PAGA Fund.

10 4.2.2. **Timing of Enhancement Awards.** The Settlement Administrator shall pay to
11 Plaintiffs any approved Enhancement Awards no later than ten (10) calendar days after the funding of
12 the Gross Settlement Amount. The Settlement Administrator shall issue an Internal Revenue Service
13 ("IRS") Form 1099 to Plaintiffs for the Enhancement Awards. Plaintiffs shall be solely and legally
14 responsible for paying all applicable taxes on the Enhancement Awards and shall indemnify and hold
15 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the
16 payments.

17 4.3. **Attorneys' Fees.** Plaintiffs' Counsel intends to request—and Defendant agrees not to
18 oppose—that the Court approve Attorneys' Fees in an amount up to thirty-eight percent (38%) of the
19 Gross Settlement Amount (or \$226,100). Except as provided in this Settlement, Defendant shall have no
20 liability for any other attorneys' fees incurred by Plaintiffs' Counsel.

21 4.4. **Attorneys' Costs.** Plaintiffs' Counsel intends to request—and Defendant agrees not to
22 oppose—that the Court approve Attorneys' Costs in an amount up to \$25,000 of the Gross Settlement
23 Amount. Except as provided in this Settlement, Defendant shall have no liability for any other attorneys'
24 costs incurred by Plaintiffs' Counsel.

25 4.4.1. **Approval Of Attorneys' Fees And Attorneys' Costs Is Not Material.** The
26 Court's approval of the Attorneys' Fees and Attorneys' Costs is not a material term of the Settlement. If
27 the Court does not approve or approves only a lesser amount than that requested by Plaintiffs' Counsel,
28 the other terms of this Settlement Agreement still apply. The Court's refusal to approve the Attorneys'

1 Fees and/or Attorneys' Costs do not give Plaintiffs, PAGA Members, or Plaintiffs' Counsel any basis to
2 abrogate this Settlement. Any amount of Attorneys' Fees and/or Attorneys Costs requested by Plaintiffs'
3 Counsel but unapproved by the Court shall be allocated to the PAGA Fund.

4 **4.4.2. Timing of Payment of Attorneys' Fees and Attorneys' Costs.** The Settlement
5 Administrator shall pay to Plaintiffs' Counsel any approved Attorneys' Fees and Attorneys' Costs no
6 later than ten (10) calendar days after the funding of the Gross Settlement Amount. The Settlement
7 Administrator shall issue an IRS Form 1099 to Plaintiffs' Counsel for any Attorneys' Fees and
8 Attorneys' Costs payments, based on the allocation communicated by Plaintiffs' Counsel. Plaintiffs'
9 Counsel shall be solely and legally responsible for paying all applicable taxes on any Attorneys' Fees or
10 Attorneys' Costs payments and shall indemnify and hold harmless Defendant from any claim or liability
11 for taxes, penalties, or interest arising as a result of the payments.

12 **4.5. Settlement Administration Costs.** Plaintiffs' Counsel intends to request—and
13 Defendant agrees not to oppose—that the Court approve the Settlement Administration Costs, which
14 will be paid from the Gross Settlement Amount. Any amount of Settlement Administration Costs
15 requested by Plaintiffs' Counsel but unapproved by the Court shall be allocated to the PAGA Fund.
16 Upon completion of administration of the Settlement, the Settlement Administrator shall provide a
17 written certification of such completion to Plaintiffs' Counsel and Defendant's Counsel. The Parties
18 agree to cooperate in the settlement administration process and to make all reasonable efforts to control
19 and to minimize Settlement Administration Costs.

20 **4.5.1. Approval Of Settlement Administration Costs Is Not Material.** The Court's
21 approval of the Settlement Administration Costs is not a material term of this Settlement Agreement. If
22 the Court does not approve or approves only a lesser amount than that requested by Plaintiffs' Counsel
23 for Settlement Administration Costs, the other terms of this Settlement Agreement shall still apply. The
24 Court's refusal to approve the Settlement Administration Costs requested by Plaintiffs' Counsel does not
25 give Plaintiffs, PAGA Members, or Plaintiffs' Counsel any basis to abrogate this Settlement. Any
26 amount of Settlement Administration Costs requested by Plaintiffs' Counsel but unapproved by the
27 Court shall be allocated to the PAGA Fund.

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1 **4.5.2. Timing of Payment of Settlement Administration Costs.** The Settlement
2 Administration Costs approved by the Court should be paid to the Settlement Administrator no later than
3 ten (10) calendar days after the funding of the Gross Settlement Amount.

4 **4.6. PAGA Fund.** The Parties will seek approval for a PAGA Fund of up to \$318,515, or the
5 equivalent of the remaining of Gross Settlement after deducting the court-approved (1) Attorneys' Fees,
6 (2) Attorneys' Costs, (3) Enhancement Awards, and (4) Settlement Administrator's Costs, to be paid
7 from the Gross Settlement Amount. The LWDA Fund, which is seventy-five percent (75%) of the
8 PAGA Fund (or up to \$238,886.25) will be paid to the LWDA consistent with Labor Code section
9 2699(i) and under the terms of this Settlement Agreement. The remaining Net Settlement Amount,
10 which is twenty-five percent (25%) of the PAGA Fund (or up to \$79,628.75) shall be available for
11 distribution to PAGA Members under the terms of this Settlement Agreement.

12 **4.6.1. Timing of LWDA Payment.** The Settlement Administrator shall pay to the
13 LWDA any approved LWDA Payment within ten (10) calendar days after the funding of the Gross
14 Settlement Amount.

15 **4.7. Individual Settlement Share.** PAGA Members shall be entitled to receive a portion of
16 the Net Settlement Amount, in accordance with the formula set forth below.

17 **4.7.1. Calculation of Each PAGA Members' Share of the Net Settlement Amount.**
18 Each PAGA Member will receive their Individual Settlement Share, which is a pro rata share of the Net
19 Settlement Amount calculated in accordance with the following formula:

20 Each PAGA Member's share of the Net Settlement Amount will be calculated using his or
21 her total number of pay periods worked during the PAGA Period divided by the total pay
22 periods worked by all PAGA Members during the PAGA Period, then multiplied by the
Net Settlement Amount — i.e. (individual pay periods ÷ total pay periods by all PAGA
Members × Net Settlement Amount).

23 **4.7.2. Timing of Individual Settlement Share.** The Settlement Administrator shall
24 issue settlement checks constituting the Individual Settlement Share to respective PAGA Member no
25 later than ten (10) calendar days after the funding of the Gross Settlement Amount.

26 **4.8. Non-Reversionary Settlement For Undeliverable or Uncashed Checks.** This
27 Settlement shall be a non-reversionary Settlement. Any settlement checks distributing Individual
28 Settlement Shares returned to the Settlement Administrator as undeliverable shall be sent within five (5)

1 calendar days via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding
2 address is provided, the Settlement Administrator shall attempt to determine the correct address using a
3 single computer skip-trace search, and it shall then perform a re-mailing within five (5) calendar days.
4 The checks for any Individual Settlement Share that remain undeliverable or uncashed one hundred and
5 eighty (180) calendar days after the postmarked date of the initial mailing of these payments will be
6 expired and deposited with the California State Controller's Unpaid Wage Fund.

7 **4.9. Tax Payment Considerations.** Neither Plaintiffs' Counsel nor Defendant's Counsel
8 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
9 taxability, nor shall anything in this Settlement Agreement be relied upon as such within the meaning of
10 United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

11 **4.9.1. No Tax Advice or Liability.** Each PAGA Member agrees to indemnify, and to
12 hold harmless Defendant from any liability for taxes, fees, costs, or assessments resulting from his or her
13 failure to timely pay their individual share of taxes, interest, fees, or penalties owed associated with their
14 Individual Settlement Share.

15 **4.9.2. Confidentiality of PAGA Member Data.** Defendant is providing the PAGA
16 Member Data confidentially, and the Settlement Administrator shall treat the PAGA Member Data as
17 private and confidential and take all necessary precautions to maintain the confidentiality of the PAGA
18 Member Data. The Settlement Administrator is to use this information only to carry out the Settlement
19 Administrator's duties as specified in this Settlement. The Settlement Administrator shall return the
20 data to Defendant or confirm its destruction upon completion of the Settlement Administrator's duties in
21 administering the Settlement. The PAGA Member Data shall not be shared with Plaintiff's Counsel
22 unless it is necessary in order for Plaintiff's Counsel to fulfill its ethical obligations, including
23 responding to inquiries from PAGA Settlement Members.

24 **5. RELEASES**

25 **5.1. Released Claims.** Upon the Effective Date and funding of the Gross Settlement Amount,
26 PAGA Members, including Plaintiffs, and the State of California will be deemed to have fully, finally,
27 and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and
28 all claims, rights, demands, liabilities, and causes of action, whether known or unknown, that were

1 asserted or could have been asserted based on any theory of recovery alleged in the Action for violation
2 of the underlying Labor Code sections asserted through the California Private Attorneys General Act of
3 2004, §§2698, *et seq.*, which occurred during the PAGA Period, and any remedies for any of the claims
4 described herein, including penalties, restitution, declaratory relief, equitable or injunctive relief,
5 interests, and attorneys' fees and costs.

6 **5.2. General Release of Claims by Plaintiffs.** In addition to the Released Claims, upon the
7 Effective Date and funding of the Gross Settlement Amount, and in consideration of Plaintiffs' awarded
8 Enhancement Awards, their Individual Settlement Share, and the other terms and conditions of the
9 Settlement Agreement, Plaintiffs will generally release any and all claims, rights, demands, liabilities,
10 and causes of action against Released Parties. This general release of all claims includes any and all
11 claims arising from Plaintiffs' employment with Defendant or the Released Parties, or the separation
12 thereof, and any acts that have or could have been asserted in any legal action or proceeding against
13 Released Parties, whether known or unknown, arising under any federal, state, or local law, or statute,
14 including, *inter alia*, those arising under the California Labor Code, the Age Discrimination in
15 Employment Act, the Older Workers Benefits Protection Act, the Americans with Disabilities Act, Title
16 VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor
17 Relations Act, California Corporations Code, California Business and Professions Code, California Fair
18 Employment and Housing Act, California Constitution, and any law of contract and tort, as well as for
19 discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment
20 compensation, emotional distress, medical expenses, other economic and non-economic damages,
21 attorneys' fees and costs, arising on or before the date on which the Settlement is executed. Plaintiffs'
22 General Release include all such claims, whether known or unknown, and Plaintiffs waive the protection
23 of California Civil Code section 1542 with respect to such claims. California Civil Code Section 1542
24 provides:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
26 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
27 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
28 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
 PARTY.

1 Plaintiffs acknowledge and agree that this knowing and voluntary waiver of California Civil
2 Code section 1542 or similar provisions is an essential and material term of this Settlement, and the
3 Settlement would not have been entered into without such a waiver.

4 Plaintiffs further acknowledge and agree that the claims or facts in addition to or different from
5 those which are now known or believed by them to exist may hereafter be discovered. It is Plaintiffs'
6 intention to settle fully and release all claims they now have against Released Parties, whether known or
7 unknown, suspected or unsuspected. The Enhancement Awards to be paid to Plaintiffs are specifically in
8 exchange for the general release of Released Parties from all claims, including those specified in this
9 paragraph and a covenant not to sue the Released Parties. Notwithstanding the above, the General
10 Release of Claims by Plaintiffs shall not extend to claims for workers' compensation benefits, claims for
11 unemployment benefits, or other claims that may not be released by law.

12 **5.3. Injunction from Pursuing Released Claims.** As part of this Settlement, which is subject
13 to Court approval, Plaintiffs and PAGA Members shall be enjoined from filing, initiating, or continuing
14 to prosecute any actions, claims, complaints, or proceedings in any court, arbitration, or with the
15 California Division of Labor Standards Enforcement ("DLSE"), or with the LWDA, or the United States
16 Department of Labor ("DOL"), or with any other entity or agency regarding the Released Claims.

17 **5.4. PAGA Members' Acknowledgement.** PAGA Members, including Plaintiffs,
18 acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or
19 law they now know or believe to exist with respect to the Released Claims. PAGA Members nonetheless
20 agree that this Settlement Agreement and the Released Claims contained in it shall be and remain
21 effective in all respects notwithstanding such different or additional facts or law regarding such Released
22 Claims. These releases do not include any claims that cannot be waived as a matter of law.

23 **5.5. Binding Effect of the Settlement.** Although some PAGA Members might not receive
24 their respective settlement checks, due to inability to locate their current address following the
25 procedures set forth in this Settlement Agreement, such individuals shall nonetheless be bound by all of
26 the terms of the Final Judgment of Approval of the Action.

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1 **6. SETTLEMENT APPROVAL PROCEDURE**

2 **6.1. Duties of the Parties with Respect to Obtaining Approval of the Settlement.**

3 Plaintiffs' Counsel will provide Defendant's counsel a draft motion for approval of the settlement on or
4 before September 27, 2022 (within 45 days of the execution of the Memorandum of the Understanding
5 on August 13, 2022), or joint stipulation if the Parties seek approval via stipulation. Defendant shall
6 cooperate with Plaintiffs in the preparation of the approval papers or joint stipulation. If the Parties elect
7 to seek approval by motion, the Parties agree to use their best efforts to schedule a hearing to seek
8 approval of the Settlement so that hearing occurs on or before November 13, 2022. If it is not possible to
9 schedule a hearing on approval of the Settlement on or before November 13, 2022, the Parties agree to
10 schedule that hearing at the first available date thereafter.

11 If the motion is not jointly filed by the Parties via stipulation, Defendant reserves its right to file
12 a responsive pleading to correct any inaccuracies presented to the Court.

13 **6.2. Effect of Failure to Obtain Approval of Settlement.** If this Settlement is not approved
14 by the Court, the Action shall proceed as if no settlement had been attempted, unless the Parties jointly
15 agree to seek reconsideration of the ruling or Court approval of a renegotiated settlement. Defendant
16 retains the right to contest whether any aspect of the Action should be maintained as a representative
17 action, or to contest the merits of the claims being asserted by Plaintiffs and PAGA Members in the
18 Action.

19 **6.3. Waiver of Appeal Rights.** By accepting this Settlement, and upon approval of the
20 Settlement being granted, the Parties hereby waive any and all rights they may have to appeal any
21 judgment, ruling, or order made by the Court in the Action, including, without limitation, any order
22 granting approval of this Settlement or dismissing the Action with prejudice, unless the Court's order or
23 ruling materially modifies the Settlement. The waiver of appeal rights includes all rights to any post-
24 judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment,
25 a motion for a new trial, a motion for relief, and any extraordinary writ, and the Judgment of Approval
26 Order therefore will become non-appealable at the time it is entered. In the event that the Court approves
27 a lesser amount of Enhancement Awards, Attorneys' Fees, and/or Attorneys' Costs, Plaintiffs and
28 Plaintiffs' Counsel retain the right to appeal the payments awarded by the Court provided that in doing

1 so, Plaintiffs and Plaintiffs' Counsel do not seek reversal of the order granting approval of the
2 Settlement in all other respects.

3 **7. MISCELLANEOUS**

4 7.1. **Submission to LWDA.** Within ten (10) calendar days after an Order or Judgment
5 approving, denying, or modifying the award of civil penalties contemplated by this Settlement, the
6 Parties shall submit a copy of the Order or Judgment to the LWDA pursuant to Labor Code section
7 2699(1)(3).

8 7.2. **Continued Jurisdiction.** After entry of judgment pursuant to the Settlement, the Court
9 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
10 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
11 enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-
12 judgment matters as may be appropriate under court rules or as set forth in this Settlement. The Parties
13 agree to adopt and apply Rule 3.769(h) of the California Rules of Court requiring entry of judgment.

14 7.3. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation in the
15 Action, except such proceedings necessary to implement and to obtain an Approval Order of the
16 Settlement Agreement. If the Settlement is not approved, the Parties agree that they will revert to their
17 positions in the Action prior to the time the Settlement was reached, and no agreements set forth in this
18 Settlement Agreement will be admissible in any future proceeding in this or any other action.

19 7.4. **Parties' Authority.** The signatories hereto represent that they are fully authorized to
20 enter into this Settlement Agreement and are fully authorized to bind the Parties to all terms stated
21 herein.

22 7.5. **Entire Agreement.** This Settlement Agreement, which includes the Definitions, Recitals,
23 and Exhibit attached hereto, constitutes the entire agreement between the Parties with regard to the
24 subject matter contained herein, and all prior and contemporaneous negotiations and understandings
25 between the Parties shall be deemed merged into this Settlement Agreement.

26 7.6. **No Publicity.** The Parties and their counsel agree that they will not issue any press
27 releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If
28 counsel for any party receives an inquiry about the Settlement from the media, counsel may respond

only after the motion for approval of the Settlement has been filed and only by confirming the accurate terms of the Settlement. Nothing in this provision shall prevent Defendant, Plaintiffs, and/or their counsel from making any disclosure required by law or their fiduciary obligations.

7.7. **Arms'-Length Transaction; Materiality of Terms.** The Parties have arrived at this Settlement as a result of arm's-length negotiations. Except as otherwise stated in this Settlement Agreement, all terms and conditions of this Settlement Agreement in the exact form set forth in it are material to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement.

7.8. **Counterparts.** This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

7.9. **Facsimile or Scanned Signatures.** Any party may sign and deliver this Settlement Agreement by signing on the designated signature block and transmitting that signature page via facsimile, via DocuSign, or as an attachment to an e-mail to counsel for the other party. Any signature made and transmitted by facsimile, via DocuSign, or as an attachment to an e-mail for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement and shall be binding upon the party who transmits the signature page.

7.10. **Binding Effect.** This Settlement Agreement shall be binding upon the Parties, the LWDA, and with respect to Plaintiffs and PAGA Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.

7.11. **Waivers and Modifications to Be in Writing.** No waiver, modification, or amendment of the terms of this Settlement Agreement, whether purportedly made before or after the Court's Approval of this Settlement Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all Parties by Plaintiffs' Counsel and Defendant's Counsel and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of future performance of the same provisions or of

any of the other provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement. The time periods and dates provided in this Settlement Agreement with respect to giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Plaintiffs' Counsel and Defendant's Counsel.

7.12. **Construction.** The determination of the terms and conditions of this Settlement Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Settlement Agreement, and the terms and conditions of this Settlement Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

7.13. **Exhibits Incorporated by Reference.** The terms of this Settlement Agreement include the terms set forth in any attached exhibit, which are incorporated by this reference as though fully set forth herein. Any exhibit to this Settlement Agreement is an integral part of the Settlement.

7.14. **Captions.** The captions or headings of the sections and paragraphs of this Settlement Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Settlement.

7.15. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to render all provisions of this Settlement Agreement valid and enforceable.

7.16. **Further Acts and Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's Approval of this Settlement Agreement and all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and to deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement.

7.17. **No Prior Assignments or Undisclosed Liens.** Plaintiffs and Plaintiffs' Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims and Plaintiffs' General Release, or the attorneys' fees and costs to be paid pursuant to this Settlement. Plaintiffs and

1 Plaintiffs' Counsel further represent and warrant that there are not any liens or claims against any of the
2 amounts to be paid by Defendant pursuant to this Settlement Agreement.

3 7.18. **Disputes.** If the Parties have a dispute with regard to the language of this Settlement
4 Agreement, they agree to first attempt to resolve the dispute informally through good faith negotiations,
5 but if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the
6 costs of the mediator, and all parties will bear their own fees and costs.

7 7.19. **Representation by Counsel.** The Parties acknowledge that Plaintiffs have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
10 counsel, and reviewed in full.

11 7.20. **Governing Law.** This Settlement Agreement was made and entered into in the State of
12 California. All terms of this Settlement Agreement shall be governed by and interpreted according to the
13 substantive laws of the State of California and the United States of America as applicable.

14 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this
15 Settlement and Release of PAGA Claims between Plaintiffs and Defendant.

16 **IT SO AGREED:**

17 10/04/2022
18 DATED: September __, 2022

19 By: 
20 KATRINA TRESTER,
21 Plaintiff

22 10/04/2022
23 DATED: September __, 2022

24 By: 
25 ABIGAIL PEREZ-TELLEZ
26 Plaintiff

1 DATED: September 30, 2022

DocuSigned by:

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3 By:

Chris Indelicato

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4 Representative for Defendant Delicato
Vineyards, LLC

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7 **APPROVED AS TO FORM:**

8 DATED: ~~September~~ 5, 2022
9 October

JUSTICE LAW CORPORATION

10
11 By:

Douglas Han
Shunt Tavataos-Gharajeh
John Bickford

12
13 Attorneys for Plaintiffs KATRINA TRESTER
AND ABIGAIL PEREZ TELLEZ

14
15 DATED: ~~September 30, 2022~~
16 October 4, 2022

SEYFARTH SHAW LLP

17
18 By:

Mike J. Burns
Andrew M. McNaught
Claire Y. Chang

19
20 Attorneys for Defendant
DELICATO VINEYARDS, LLC

EXHIBIT A

EXHIBIT A

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

(A court authorized this notice. This is not a solicitation. This is not a lawsuit against you, and you are not being sued.)

Katrina Trester and Abigail Perez-Tellez v. Delicato Vineyards, a California Corporation, San Benito County Superior Court, Case No. CU-22-00016

You are receiving this Notice because the Court has approved a Private Attorneys General Act (“PAGA”) settlement in the above-listed case, and you are a member of the representative group that is entitled to receive money. Enclosed please find a check with your portion of the settlement proceeds.

A settlement (the “Settlement”) has been reached between Plaintiffs Katrina Trester and Abigail Perez-Tellez (“Plaintiffs”) and Defendant Delicato Vineyards (“Defendant”) in a PAGA representative action pending in the San Benito County Superior Court, Case No. CU-22-00016 (the “Lawsuit”). You have received this Notice because Defendant’s records indicate that you are a member of the representative group (individually referred to as “PAGA Member”) defined as:

All current and former non-exempt or hourly-paid employees directly employed by Defendant and who worked for Defendant in California from November 22, 2020 through [DATE].

This Notice is not to be understood or viewed as an expression of any opinion from the Court as to the merits of any of the claims asserted by Plaintiffs or defenses asserted by Defendant. Defendant did not admit any wrongdoing or violation of the law and continues to deny that it violated any law alleged in the Lawsuit. The Lawsuit was litigated and ultimately resolved through a compromise to settle the claims of Plaintiffs, the State of California, and PAGA Members in order to avoid the risks, uncertainties, and expense of further litigation.

What This Lawsuit Is About. Plaintiffs contend that between November 22, 2020 and [DATE], Defendant allegedly failed to: properly pay wages (including overtime and minimum wages); provide paid sick leave; provide compliant meal and rest breaks; timely pay wages during employment and upon termination; provide accurate wage statements; maintain accurate wage statements; and reimburse business expenses; and therefore owed civil penalties under PAGA. Plaintiffs sought to recover penalties on behalf of the State of California and PAGA Members under the PAGA statute, which provides that 75% of any recovery be paid to the State of California and 25% of any recovery be paid to PAGA Members. Defendant denied, and continues to deny, that it violated any law alleged in the Lawsuit, and denies that the case is suitable for representative treatment.

Approval Of The Settlement. The San Benito County Superior Court approved this Settlement on [DATE]. By approving the Settlement, the Court did not decide in favor of Plaintiffs or Defendant.

Your Individual Settlement Share. The Individual Settlement Share which accompanies this Notice is made to you pursuant to the terms of the Settlement and is based on the number of pay periods in which you were employed by Defendant as a non-exempt or hourly paid employee in California at any time during the period between November 22, 2022 and [DATE] and received any regular pay for performing work. Your Individual Settlement Share is characterized entirely as IRS Form 1099 income. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the Settlement and you should consult a tax advisor regarding the tax consequences of such payment.

Released Claims. Upon the Court's entry of the Approval Order of the Settlement, you as a PAGA Member will release the Released Parties (defined below) of any and all claims, rights, demands, liabilities, and causes of action, whether known or unknown, that were asserted or could have been asserted based on any theory of recovery alleged in the Lawsuit for violation of the underlying Labor Code sections asserted through the California Private Attorneys General Act of 2004, §§2698, *et seq.*, which occurred during the period between November 22, 2022 and [DATE], and any remedies for any of the claims described herein, including penalties, restitution, declaratory relief, equitable or injunctive relief, interests, and attorneys' fees and costs.

Released Parties. Released Parties means Defendant, and/or any of its current and former parents, successors, predecessors, affiliates, subsidiaries and related entities, and any of their current or former officers, directors, members, shareholders, managers, human resources representatives, employees, agents, contractors, insurance carriers, representatives, or attorneys.

Cashing of Your Check. Your share of the net settlement proceeds is enclosed herein. As indicated on the check, you have One-Hundred and Eighty (180) days from the date of mailing of the check to cash it. If you do not cash your check within 180 days, the check will be expired and deposited with the California Department of Industrial Relations' Unpaid Wage Fund.

PLEASE DO NOT CALL THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT. YOU MAY, HOWEVER, DIRECT ANY QUESTIONS ABOUT THE SETTLEMENT TO THE SETTLEMENT ADMINISTRATOR:

[Insert Settlement Administrator Information]

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On October 5, 2022, I served the foregoing document described as

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

for the following case: **Trester, et al. v. Delicato Vineyards**
LWDA/Court Case No.: **LWDA Case No.: CM- 842890-21**
Court Case No.: CU-22-00016
San Benito County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on October 5, 2022, at Pasadena, California.



Anna Okada