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CENDEJAS and on behalf of herself and all
others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

SANTOS MENDOZA CENDEJAS, as an
individual, class representative and an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

vs.

E. & J. GALLO WINERY, a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

CASE NO. CV-22-005396

**CLASS ACTION AND PAGA
ACTION SETTLEMENT
AGREEMENT**

Department: 24
Judge: Hon. Sonny S. Sandhu

Case Filed: November 18, 2022
Trial Date: Not Set

1 This Class Action and PAGA Action Settlement Agreement (hereinafter “**Settlement**,”
2 “**Settlement Agreement**,” or “**Agreement**”) is entered into by and between Santos Mendoza
3 Cendejas, individually and on behalf of all others similarly situated, (“**Plaintiff**”); and Defendant
4 E. & J. Gallo Winery (“**Gallo**” or “**Defendant**”). This Agreement refers to Plaintiff and
5 Defendant collectively as the “**Parties**,” and individually as “**Party**.”

6 Subject to Court approval, Plaintiff and Defendant agree to settle the Action on the terms
7 and conditions and for the consideration set forth in this Settlement Agreement.

8 **DEFINITIONS**

9 For purposes of this Settlement Agreement, the following terms will have the defined
10 meanings:

11 1. “**Action**” means, upon the filing of the Operative Complaint, the civil action
12 entitled *Santos Mendoza Cendejas, as an aggrieved employee, and on behalf of all other*
13 *aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, Plaintiff, vs.*
14 *E. & J. Gallo Winery, a California corporation; and DOES 1 to 100, inclusive, Defendant,*
15 pending before the Superior Court of the State of California County of Stanislaus (the “Court”),
16 Case No. CV-22-005396.

17 2. “**Aggrieved Employees**” means all current and former non-exempt persons
18 directly employed by Defendant and who worked for Defendant as a full-time or part-time
19 Regular, Temporary or Seasonal employee (as defined by Defendant) at any of Defendant’s
20 locations in the State of California at any time during the PAGA Period. The term “Aggrieved
21 Employees” excludes anyone who was employed by a temporary services agency, including but
22 not limited to Kelly Services Global, LLC, or any of its parent, subsidiary or affiliated entities)
23 (collectively, “Kelly”) or by any vendor of Defendant or Kelly while performing services for or
24 at Defendant.

25 3. “**Aggrieved Employees’ PAGA Settlement**” means \$50,000.00, *i.e.*, 25% of the
26 PAGA Settlement Amount, that will be distributed among all Aggrieved Employees as described
27 in paragraph 50(b) for their share of the settlement of claims for civil penalties under PAGA, as
28 required by California Labor Code § 2699(i).

1 4. **“Attorneys’ Fees and Costs”** means attorneys’ fees for Class Counsel’s litigation
2 and resolution of the Class Action and PAGA Action and all actual litigation costs and expenses
3 incurred and to be incurred by Class Counsel therewith, as set forth in paragraph 46 below.

4 5. **“Class Counsel”** means David Bibiyan, Jeffrey D. Klein and Vedang J. Patel of
5 Bibiyan Law Group, P.C.

6 6. **“Class Members”** means all current and former non-exempt persons directly
7 employed by Defendant and who worked for Defendant as a full-time or part-time Regular,
8 Temporary or Seasonal employee (as defined by Defendant) at any of Defendant’s locations in the
9 State of California at any time during the Class Period. The term “Class Member” excludes
10 anyone who was employed by a temporary services agency, including but not limited to Kelly or
11 by any vendor of Defendant or Kelly while performing services for or at Defendant.

12 7. **“Class Period”** means the period from September 16, 2021, through the date the
13 Court grants preliminary approval of this Settlement (*i.e.*, enters the Preliminary Approval Order),
14 unless shortened , pursuant to paragraph 49, of this Agreement.

15 8. **“Class Settlement”** means the Net Settlement Amount, which will be distributed
16 to Participating Class Members.

17 9. **“Defense Counsel”** means Paul Hastings LLP.

18 10. **“Effective Date”** means the date on which this Settlement is deemed final. The
19 Settlement’s Effective Date will be the earlier of (a) the deadline for filing a timely appeal if no
20 such appeal from the final approval of the Settlement and judgment is filed; or (b) if a timely
21 appeal is filed, the date the appeal is dismissed or withdrawn or the date of final affirmation of the
22 judgment on appeal if the appeal is not dismissed or withdrawn; or (c) the date the Court signs the
23 Final Approval Order and Judgment if no Participating Class Member makes an objection to the
24 Class Settlement..

25 11. **“Employer Taxes”** means the legally mandated employer-paid portion of the
26 payroll taxes required to effectuate the settlement of wage claims, which will be paid in addition
27 to the Gross Settlement Amount.
28

1 12. **“Enhancement Award”** means the amount to be paid to Plaintiff in recognition of
2 his effort and work in prosecuting the Class Action and PAGA Action on behalf of the Class
3 Members and State of California with respect to Aggrieved Employees.

4 13. **“Final Approval Hearing”** means the hearing at which the Court will consider
5 and determine whether the Settlement should be granted final approval.

6 14. **“Final Approval Order and Judgment”** means the Court’s order and judgment
7 granting final approval of the Settlement Agreement, entering judgment, and retaining jurisdiction
8 with respect to the interpretation, implementation, and enforcement of the terms of this Settlement
9 Agreement.

10 15. **“Gross Settlement Amount”** means the amount that Defendant will be obligated
11 to pay on a non-reversionary basis in connection with the Settlement, which, unless increased
12 pursuant to paragraph 49 of this Agreement, is \$3,850,000.00. The Gross Settlement Amount
13 will include all Individual Class Payments to Participating Class Members; the Enhancement
14 Award to named Plaintiff; the PAGA Settlement Amount (75% of which is allocated to the
15 LWDA Payment and 25% of which is allocated to the Aggrieved Employees’ PAGA Settlement
16 and distributed as Individual PAGA Payments to Aggrieved Employees); Class Counsel’s
17 Attorneys’ Fees and Costs; and all settlement administration fees paid to the Settlement
18 Administrator. The Gross Settlement Amount covers 385,000 Workweeks worked, plus a 10%
19 escalator/buffer (*i.e.*, 385,000 Workweeks + 38,500 Workweeks = 423,500 Workweeks). The
20 Gross Settlement Amount expressly excludes Employer Taxes, which will be paid by Defendant
21 separate, apart, and in addition to the Gross Settlement Amount.

22 16. **“Individual Class Payment”** means each Participating Class Member’s *pro rata*
23 share of the Net Settlement Amount paid for the settlement and release of Class Claims through
24 the Class Period, to be calculated in accordance with paragraph 50(a).

25 17. **“Individual PAGA Payment”** means each Aggrieved Employee’s *pro rata* share
26 of the Aggrieved Employees’ PAGA Settlement paid for the settlement and release of PAGA
27 Claims through the PAGA Period, to be calculated in accordance with paragraph 50(b).
28

1 18. **“Litigation”** means the action entitled *Santos Mendoza Cendejas v. E. & J. Gallo*
2 *Winery*, filed in the Superior Court of the State of California, County of Stanislaus, Case No. CV-
3 22-005396- (*i.e.*, the Action).

4 19. **“LWDA”** means the California Labor & Workforce Development Agency.

5 20. **“LWDA Payment”** means the \$150,000.00 *i.e.*, 75% of the PAGA Settlement
6 Amount that will be payable to the LWDA for its share of the settlement of claims for civil
7 penalties under PAGA, as required by California Labor Code § 2699(i).

8 21. **“Net Settlement Amount”** means the amount remaining after deduction from the
9 Gross Settlement Amount for Plaintiff’s Enhancement Award, Class Counsel’s Attorneys’ Fees
10 and Costs, the Settlement Administration Costs, and the PAGA Settlement Amount.

11 22. **“Non-Participating Class Member”** refers to those Class Members who exclude
12 themselves from the Class Settlement.

13 23. **“Notice”** means the Notice of Class Action and PAGA Representative Action
14 Settlement given to Class Members and Aggrieved Employees of the Settlement and the hearing
15 date for the Final Approval Hearing (Exhibit “A”).

16 24. **“Notice of Objection”** means the Notice of Objection Form (Exhibit “B”) or
17 equivalent letter that Class Members may send to the Settlement Administrator to object to the
18 Class Settlement which must: (a) contain the case name and number of the Class Action; (b)
19 contain the objector’s full name, signature, address, telephone number, and last four digits of his,
20 her, or their Social Security number; (c) contain a written statement of all grounds for the
21 objection to the Class Settlement accompanied by any legal support for such objection; (d)
22 include copies of any papers, briefs, or other documents upon which the objection to the Class
23 Settlement is based; (e) contain the name and contact information of any attorney representing the
24 objector with respect to his, her, or their objection to the Class Settlement; and (f) be returned by
25 mail to the Settlement Administrator at the specified address, postmarked on or before the
26 Response Deadline.

1 25. **“Operative Complaint”** is the contemplated Amended PAGA and Class Action
2 Complaint for Damages and Enforcement Under the Private Attorneys General Act, California
3 Labor Code § 2698, to be filed in the Action, to implement the Settlement.

4 26. **“PAGA Period”** means the period from September 16, 2021, through the end of
5 the Class Period.

6 27. **“PAGA Settlement Amount”** means the allocation of \$200,000.00 from the
7 Gross Settlement Amount for the PAGA Settlement. 75% of the PAGA Amount, or \$150,000.00,
8 will be paid to the LWDA (*i.e.*, the LWDA Payment), and the remaining 25% or, \$50,000.00, will
9 be distributed to Aggrieved Employees (*i.e.*, the Aggrieved Employees’ PAGA Settlement).

10 28. **“PAGA Settlement”** means the settlement and resolution of all Released PAGA
11 Claims.

12 29. **“Participating Class Member”** refers to all Class Members who do not timely
13 submit a valid and timely Request for Exclusion.

14 30. **“Released Class Claims”** means any and all claims, known or unknown,
15 contingent or accrued, against every Released Party, that have been, or could have been, asserted
16 and that arise from the facts, matters, transactions or occurrences alleged in the Action, including,
17 without limiting the foregoing, claims for failure to pay overtime; failure to pay minimum wages;
18 failure to provide meal periods or additional pay in lieu thereof; failure to provide rest breaks or
19 additional pay in lieu thereof; failure to timely pay wages upon separation; failure to timely pay
20 wages owed during employment; inaccurate itemized wage statements; unreimbursed business
21 expenses; failure to provide one day's rest in seven; failure to maintain accurate payroll records;
22 failure to provide notice of material terms of employment; failure to provide paid sick leave and
23 COVID supplemental sick leave; failure to provide reporting time pay; violations of California
24 Labor Code §§ 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 218.6, 225.5, 226, 226.3,
25 226.7, 227.3, 232, 232.5, 233, 234, 235.5, 245-249, 292, 293, 401, 410, 432, 432.5, 460, 510,
26 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
27 1198.5, 2800, 2802, 2810.5, 6409.6, 6432, the applicable California Wage Orders, and all related
28

1 or corresponding federal laws; violation of California Business and Professions Code § 17200, *et*
2 *seq.*; and claims under California Labor Code § 2698, *et seq.*

3 31. **“Released PAGA Claims”** means any and all claims, known or unknown,
4 contingent or accrued, against every Released Party, that have been, or could have been, asserted
5 and that arise from the facts, matters, transactions or occurrences alleged in the Action, including,
6 without limiting the foregoing, claims for failure to pay overtime; failure to pay minimum wages;
7 failure to provide meal periods or additional pay in lieu thereof; failure to provide rest breaks or
8 additional pay in lieu thereof; failure to timely pay wages upon separation; failure to timely pay
9 wages owed during employment; inaccurate itemized wage statements; unreimbursed business
10 expenses; failure to provide one day’s rest in seven; failure to maintain accurate payroll records;
11 failure to provide notice of material terms of employment; failure to provide paid sick leave and
12 COVID supplemental sick leave; failure to provide reporting time pay; violations of California
13 Labor Code §§ 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 218.6, 225.5, 226, 226.3,
14 226.7, 227.3, 232, 232.5, 233, 234, 235.5, 245-249, 292, 293, 401, 410, 432, 432.5, 460, 510,
15 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
16 1198.5, 2800, 2802, 2810.5, 6409.6, 6432, the applicable California Wage Orders, and all related
17 or corresponding federal laws; violation of California Business and Professions Code § 17200, *et*
18 *seq.*; and claims under California Labor Code § 2698, *et seq.*

19 32. **“Released Parties”** mean Defendant and its current and former parents,
20 predecessors or successors, holding companies, affiliated companies, or entities (including, but
21 not limited to, each of their respective owners, shareholders, members, partners, officers,
22 directors, managers, employees, and agents).

23 33. **“Request for Exclusion”** means the Request for Exclusion Form (Exhibit “C”) or
24 an equivalent letter that Class Members may send to the Settlement Administrator to request
25 exclusion from the Class Settlement which must: (a) contain the case name and number of the
26 Class Action; (b) the full name, signature, address, telephone number, and the last four digits of
27 the Social Security number of the Class Member requesting exclusion from the Class Settlement;
28 (c) state that the Class Member does not wish to be included in the Class Settlement; and (d) be

1 returned by mail to the Settlement Administrator at the specified address, postmarked on or
2 before the Response Deadline.

3 34. **“Response Deadline”** means the 45 calendar days following the date the
4 Settlement Administrator mails the Notice to the Class Members and Aggrieved Employees,
5 unless a Class Member’s Notice is re-mailed prior to the original Response Deadline, in which
6 case the said Class Member’s Response Deadline will be extended to the date that is 15 calendar
7 days from the re-mailing. Any Request for Exclusion, Notice of Objection, and/or Workweeks
8 Dispute must be submitted to the Settlement Administrator postmarked by the Response
9 Deadline.

10 35. **“Settlement Administrator”** means Atticus Administration, or any other third-
11 party settlement administrator agreed to by the Parties and approved by the Court for purposes of
12 administering this Settlement. The Parties and their counsel each represent that they do not have
13 any financial interest in the Settlement Administrator or otherwise have a relationship with the
14 Settlement Administrator that could create a conflict of interest.

15 36. **“Settlement Administration Costs”** means the costs payable from the Gross
16 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering
17 the Settlement, as set forth in paragraph 48 below.

18 37. **“Workweeks”** means the number of weeks that a Class Member performed work
19 in California as an employee of Defendant in a non-exempt position during the Class Period,
20 based on payroll and time records, hire dates, re-hire dates (as applicable), leave of absence dates,
21 and termination dates (as applicable).

22 38. **“Workweeks Dispute”** means a Class Member’s written letter disputing the
23 number of Workweeks to which the Class Member has been credited, as reflected in their Notice,
24 which must: (a) contain the case name and number of the Action; (b) contain the full name,
25 signature, address, telephone number, and the last four digits of the Social Security number of the
26 disputing Class Member; (c) clearly state the Class Member disputes the number of Workweeks
27 credited and what the Class Member contends is the correct number to be credited to the Class
28 Member; (d) include information and/or attach documentation supporting the number of

1 Workweeks the Class Member contends should be credited; and (e) be returned by mail to the
2 Settlement Administrator at the specified address, postmarked on or before the Response
3 Deadline.

4 **BACKGROUND**

5 39. On September 16, 2022, Plaintiff filed with the LWDA and served on Defendant a
6 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
7 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
8 violations (“PAGA Notice”).

9 40. On November 18, 2022, Plaintiff Santos Mendoza Cendejas filed the Action
10 alleging violations of the Labor Code as asserted in the PAGA Notice for which Plaintiff sought
11 civil penalties under PAGA.

12 41. Prior to mediation, Plaintiff obtained, through informal discovery: (1) time and
13 payroll records for approximately 100% of the estimated 5,809 Class Members for the Class
14 Period; (2) Collective Bargaining Agreements (“CBAs”); (3) purported arbitration agreements;
15 and (5) all of Plaintiff’s personnel records in Defendant’s custody, possession, or control.

16 42. Following the exchange of data, documents, and information, the Parties attended
17 a full-day mediation session with Mediator Lynn Frank, during which they engaged in substantial,
18 arm’s-length settlement negotiations, and ultimately agreed on a resolution. The terms of that
19 resolution and further negotiations thereafter are set out in this Settlement Agreement.

20 43. The Parties agree to cooperate and take all steps necessary and appropriate to
21 consummate this Settlement. The Parties agree the Settlement is fair, adequate, and reasonable.
22 This Settlement contemplates (a) entry of a Preliminary Approval Order that includes
23 authorization to distribute to each of the Class Members a Notice of Class Action and PAGA
24 Representative Action Settlement, including the estimated Individual Class Payment and
25 Individual PAGA Payment that the Participating Class Members and Aggrieved Employees,
26 respectively, may qualify to receive (attached as Exhibit “A”); and (b) entry of a Final Approval
27 Order and Judgment in the Action, and thus ending the litigation.

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1 **AMENDED PLEADING**

2 44. The Parties agree and shall stipulate that the Action shall be amended to add class
3 action claims for the purposes of seeking approval of the Settlement. The Parties shall also
4 stipulate to Plaintiff filing an amended pleading in the Action to include the PAGA claims which
5 reasonably could have been pleaded in the Action, as well as the additional theories of liability
6 raised at mediation necessary to effectuate a full and complete release of any and all claims.

7 **MONETARY SETTLEMENT TERMS**

8 45. **Gross Settlement Amount.** Defendant will transmit to the Settlement
9 Administrator the Gross Settlement Amount of \$3,850,000.00. Defendant will not be required to
10 pay more than the Gross Settlement Amount, except for the Employer Taxes and potentially as
11 described in paragraph 49 of this Agreement, which Defendant will pay separately from and in
12 addition to the Gross Settlement Amount.

13 46. **Class Counsel's Attorneys' Fees and Costs.** Class Counsel will apply for, and
14 Defendant will not oppose, an application to the Court for attorney's fees of up to one-third (1/3)
15 of the Gross Settlement Amount, which unless increased pursuant to paragraph 49 of this
16 Agreement, amounts to \$1,283,333.33. Defendant will also not oppose Plaintiff's application to
17 the Court for reimbursement of Class Counsel's litigation costs and expenses in an amount up to
18 \$50,000.00. The Settlement Administrator (and not Defendant) will issue IRS Form 1099-MISC
19 reflecting the award of Attorneys' Fees and Costs. The payment by Defendant of the Court-
20 awarded attorney's fees and litigation costs will constitute full satisfaction of Defendant's
21 obligation to pay any person, attorney, or law firm for attorneys' fees, costs, and expenses
22 incurred on behalf of the Plaintiff and/or Participating Class Members, and/or Aggrieved
23 Employees in the Action unless Defendant fails to fund the Settlement as provided in paragraph
24 65(b) after Class Counsel gives said Defendant five Court days' notice to cure such failure. Class
25 Counsel will be solely and legally responsible for correctly characterizing this compensation for
26 tax purposes and for paying any taxes on the amounts received. With respect to the Attorneys'
27 Fees and Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize
28 United States Treasuries and bonds or utilize other attorney fee deferral vehicles, for Class

1 Counsel and any additional expenses for doing so will be paid separately by Class Counsel and
2 will not be included within the Settlement Administration Costs. Defendant and Defendant's
3 Counsel will not be liable for any expenses associated with the purchase or use of any attorney
4 fee deferral vehicles for Class Counsel by the Settlement Administrator. Even in the event that
5 the Court reduces or does not approve the requested the Attorneys' Fees and Costs to Class
6 Counsel, neither Plaintiff nor Class Counsel will have the right to revoke this Agreement, and it
7 will remain binding. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel
8 will be a part of the Net Settlement Amount for the benefit of Participating Class Members.

9 **47. Enhancement Award to Plaintiff.** Defendant will not oppose Plaintiff's
10 application to the Court for an Enhancement Award of up to \$10,000.00 to Plaintiff to be paid out
11 of the Gross Settlement Amount. The Settlement Administrator (and not Defendant) will issue an
12 IRS Form 1099-MISC to Plaintiff reflecting his Enhancement Award. The failure of the Court to
13 award an Enhancement Award to Plaintiff will not constitute grounds for rescission of this
14 Settlement Agreement. The Settlement Administrator will make the Enhancement Award at the
15 same time as it makes the Individual Class Payments to the other Class Members and the
16 Individual PAGA Payments to the Aggrieved Employees. Should the Court not approve the
17 Enhancement Award to the Plaintiff in the amount that is set forth above, Plaintiff will not have
18 the right to revoke this Agreement, and it will remain binding, and any portion that is not awarded
19 will revert back to the Gross Settlement Amount for the benefit of the Participating Class
20 Members.

21 **48. Settlement Administration Costs.** The Parties have selected Phoenix Settlement
22 Administrators as the Settlement Administrator. The Settlement Administrator will receive from
23 the Gross Settlement Amount its fees and expenses incurred in administering this Settlement, in
24 an amount estimated to be up to \$40,000.00. These costs, which will be paid from the Gross
25 Settlement Amount, subject to Court approval, will include, *inter alia*, printing, distributing, and
26 tracking Notices and other documents for this Settlement, calculating and distributing payments
27 due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting,
28 filings, withholdings, and remittances, providing necessary reports and declarations, and other

1 duties and responsibilities set forth herein to process this Settlement, and as requested by the
2 Parties. To the extent actual Settlement Administration Costs are greater than the estimated
3 amount stated herein, such excess amount will be deducted from the Gross Settlement Amount,
4 subject to approval by the Court. Any portion of the estimated, designated, and/or awarded
5 Settlement Administration Costs which are not in fact required to fulfill payment to the
6 Settlement Administrator to undertake the requirement settlement administration duties will be
7 part of the Gross Settlement Amount for the benefit of Participating Class Members. Plaintiff,
8 Class Counsel, Defendant, and Defendant's Counsel will not bear any responsibility for errors or
9 omissions in the calculation or distribution of the Settlement payments or the development of the
10 list of recipients of Settlement payments.

11 **49. Increase in Workweeks.** Defendant estimates that there are 385,000 Workweeks
12 in the period from September 16, 2021, to February 20, 2024. In the event that the number of
13 Workweeks worked by Class Members during the Class Period increases by more than 10% (*i.e.*,
14 exceeds 423,500 Workweeks), then at Defendant's election: (a) the Gross Settlement Amount
15 will be increased on a pro-rata basis for any Workweeks added above the 10% increase (*e.g.*, if
16 the threshold of 423,500 Workweeks is exceeded by 1% to 427,735 Workweeks, the Gross
17 Settlement Amount will increase by 1%, or \$38,500.00, for an increased Gross Settlement
18 Amount of \$3,888,500.00); or (b) the Class Period and PAGA Period will end on the date the
19 number of Workweeks worked reaches 423,500. Defendant will notify Class Counsel of its
20 election no later than 14 days after receiving sufficient information from the Settlement
21 Administrator if the number of Workweeks worked in the Class Period has exceeded 423,500.

22 **50. Allocation of Settlement Shares.** The Individual Class Payments and the
23 Individual PAGA Payments will be calculated as follows:

24 **a. Individual Class Payment.** Each Participating Class Member will receive
25 a *pro rata* share of the Net Settlement Amount based on the number of Workweeks that he
26 or she worked in each position covered by the Settlement during the Class Period (the
27 "Individual Class Payment"), calculated as follows:

28 i. After Court enters the Preliminary Approval, the Settlement Administrator

1 will divide the estimated Net Settlement Amount by the Workweeks of all
2 Class Members during the Class Period to yield the “Estimated Workweek
3 Value,” and multiply each Class Member’s individual Workweeks by the
4 Estimated Workweek Value to yield his, her, or their estimated Individual
5 Class Payment.

6 ii. After Final Approval of the Settlement, the Settlement Administrator will
7 divide the final Net Settlement Amount by the Workweeks of all
8 Participating Class Members to yield the “Final Workweek Value,” and
9 multiply each Participating Class Member’s individual Workweeks by the
10 Final Workweek Value to yield his, her, or their Individual Class Payment.

11 b. **Individual PAGA Payment.** All Aggrieved Employees as defined by
12 California Labor Code § 2699(c), including those who do not otherwise qualify as a
13 Participating Class Member and would thus not receive an Individual Class Payment, will
14 receive their *pro rata* share of the Aggrieved Employees’ PAGA Settlement based on the
15 number of Workweeks that he or she worked in each position covered by the Settlement
16 during the PAGA Period, calculated as follows: The Settlement Administrator will divide
17 the Aggrieved Employees’ PAGA Settlement (*i.e.*, 25% of the PAGA Amount) by the
18 total number of Aggrieved Employee’s Pay Periods worked during the PAGA Period to
19 yield the “PAGA Workweek Value,” and multiple each Aggrieved Employee’s individual
20 Workweeks during the PAGA Period by the PAGA Workweek Value to yield his, her, or
21 their Individual PAGA Payment.

22 c. When a Participating Class Member is also an Aggrieved Employee, one
23 check may be issued that aggregates both the Individual Class Payment and the Individual
24 PAGA Payment.

25 51. **Tax Treatment.** Each Individual Class Payment will be allocated as follows:
26 (i) 20% of the amount distributed to each Participating Class Member will be considered wages,
27 and will be reported as such to each Participating Class Member on an IRS Form W-2; (ii) 40%
28 of the amount distributed to each Participating Class Member will be considered interest on the

unpaid wages, and will be reported as such to each Participating Class Member on an IRS Form 1099; and (iii) 40% of the amount distributed to each Participating Class Member will be considered statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099. The PAGA payments distributed to each Aggrieved Employee will be considered penalties and will be reported on an IRS Form 1099. Defendant's portion of the payroll taxes are not part of the Settlement Fund and shall be paid by Defendant separately.

52. **Impact on Benefits.** The payments made pursuant to this Settlement will not have any effect on the eligibility or calculation of any employee benefits provided by any Released Party. The Parties agree these payments do not represent any modification of any employee's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

53. **Tax Liability.** Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that, except for Defendant's payment of Employer Taxes, they will be solely responsible for correctly characterizing any compensation received under the Settlement on their respective personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.

THE RELEASES

54. **General Release of Claims by Plaintiff.** Upon the Effective Date and payment by Defendant to the Settlement Administrator of the full amount of the Gross Settlement Amount and Employer Taxes, and in consideration of the payments he will receive under the settlement, Plaintiff will be deemed to have fully released and discharged the Released Parties of and from all claims arising from his employment with Defendant, separation of employment from Defendant,

1 and any acts that have or could have been asserted in any legal action or proceeding against
2 Defendant, whether known or unknown, arising under any federal, state, or local law, or statute,
3 including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act,
4 Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement
5 Income Security Act, National Labor Relations Act, California Corporations Code, California
6 Business and Professions Code, California Fair Employment and Housing Act, California
7 Constitution (all as amended), and law of contract and tort, as well as for discrimination,
8 harassment, retaliation, wrongful termination, lost wages, benefits, other employment
9 compensation, emotional distress, medical expenses, other economic and non-economic damages,
10 attorney's fees, and costs, arising on or before the date of execution of the Settlement Agreement.
11 With respect to those claims released by Plaintiff in an individual capacity, Plaintiff
12 acknowledges and waives any and all rights and benefits available under California Civil Code
13 section 1542, which provides:

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

19 Plaintiff understands and agrees that claims or facts in addition to or different from those which
20 are now known or believed by them to exist may hereafter be discovered. Plaintiff intends to
21 settle fully and release all claims he now has against the Released Parties, whether known or
22 unknown, suspected or unsuspected, upon the Effective Date and full funding of the Gross
23 Settlement Amount and Employer Taxes. Plaintiff further agrees that he will not disparage
24 Released Parties' products or services. Notwithstanding the above, the general release by
25 Plaintiff will not extend to claims for workers' compensation benefits, claims for unemployment
26 benefits, or other claims that may not be released by law.

27 55. **Class Settlement Release.** Upon the Effective Date of the Settlement, and
28 payment by Defendant to the Settlement Administrator of the full amount of the Gross Settlement

1 Amount and Employer's Taxes, Plaintiff and the Participating Class Members will be deemed to
2 have fully, finally, and forever released, settled, compromised, relinquished, and discharged the
3 Released Parties of all Released Class Claims. The period of this release will extend to the limits
4 of the Class Period. By virtue of this Agreement, Plaintiff and the Participating Class Members
5 will be deemed to have, and by operation of the Final Approval Order and Judgment approved by
6 the Court, will have, fully, finally, and forever settled and released all of the Released Class
7 Claims. The Parties understand and specifically agree that the scope of the release described in
8 this paragraph is a material part of the consideration for this Agreement; was critical in justifying
9 the agreed upon economic value of this settlement and without it Defendant would not have
10 agreed to the consideration provided; and is narrowly drafted and necessary to ensure that
11 Defendant is obtaining peace of mind regarding the resolution of claims that were or could have
12 been alleged based on the facts, causes of action, and legal theories contained in the Operative
13 Complaint. The Class Members understand and agree that this release includes a good-faith
14 compromise of disputed wage claims. The Class Members do not release any claims based on
15 facts occurring outside the Class Period.

16 **56. PAGA Settlement Release.** Upon the Effective Date of the Settlement and full
17 funding of the full amount of the Gross Settlement Amount and Employer's Taxes by Defendant,
18 Plaintiff, and the State of California with respect to the Aggrieved Employees will be deemed to
19 have fully, finally, and forever released, settled, compromised, relinquished, and discharged the
20 Released Parties of all Released PAGA Claims pertaining to Plaintiff and the Aggrieved
21 Employees, whether known or unknown. By virtue of this Agreement, Plaintiff and the State of
22 California will be deemed to have, and by operation of the Final Approval Order and Judgment
23 approved by the Court, will have, fully, finally, and forever settled and released all of the
24 Released PAGA Claims. The parties understand and specifically agree that the scope of the
25 release described in this paragraph is a material part of the consideration for this Agreement; was
26 critical in justifying the agreed upon economic value of this settlement and without it Defendant
27 would not have agreed to the consideration provided; and is narrowly drafted and necessary to
28 ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or

could have been alleged based on the facts, causes of action, and legal theories contained in the Operative Complaint.

SETTLEMENT APPROVAL, NOTICE AND IMPLEMENTATION PROCEDURE

57. Motion for Preliminary Approval.

a. Upon execution of this Settlement Agreement, Plaintiff will promptly obtain a hearing date for Plaintiff's motion for preliminary approval, which Plaintiff and Class Counsel will be responsible for drafting and submitting this Settlement Agreement to the Court in support of that motion. Defendant agrees not to oppose the motion for preliminary approval of the Settlement consistent with this Settlement Agreement. Defendant agrees to provide Class Counsel a draft of any required declarations in support of Plaintiff's motion for preliminary approval at least three court days before Plaintiff's deadline to file the motion for preliminary approval. The motion will request that the Court enter an order ("Preliminary Approval Order"), which will be mutually agreed upon by the Parties, seeking the following:

- i. Conditionally certifying the Class;
- ii. Granting preliminary approval of the Settlement;
- iii. Preliminarily appointing Plaintiff as representative of the Class;
- iv. Preliminarily appointing Class Counsel as counsel for the Class;
- v. Approving, as to form and content, the mutually-agreed-upon and proposed Notice, Notice of Objection Form, and Request for Exclusion Form and directing their mailing to the Class by First-Class U.S. Mail;
- vi. Approving the manner and method for Class Members to request exclusion from or object to the Class Settlement as contained herein and within the Notice; and
- vii. Scheduling a Final Approval Hearing at which the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate.

1 b. Pursuant to California Labor Code § 2699(1)(2), Class Counsel will submit
2 a copy of this Agreement to the LWDA on the same day they file the motion for
3 preliminary approval. The Parties intend and believe that submission of this Settlement to
4 the LWDA pursuant to the procedures described in this section complies with the
5 requirements of PAGA and will request the Court to approve the PAGA Settlement in the
6 motion for final approval of the Settlement and bar any claim to void or avoid the
7 Settlement under PAGA.

8 c. Should the Court decline to preliminarily approve all material aspects of
9 the Settlement, or order material changes to the Settlement to which the Parties do not
10 agree, then the Settlement will be at either Party's discretion and only after the Parties
11 meet and confer in good faith as provided in paragraph 63(e) null and void, and the Parties
12 will have no further obligations under it. The Parties agree that an award by the Court of
13 lesser amounts than sought for the Enhancement Award to Plaintiff or for Class Counsel's
14 Attorneys' Fees and Costs will not be a material change to or of the Settlement and will
15 not be grounds to nullify or void the Settlement.

16 58. **Notice to Class Members.** After the Court enters its Preliminary Approval Order,
17 every Class Member will be provided with the Notice as follows:

18 a. Within 21 calendar days after the Court enters its Preliminary Approval
19 Order, Defendant will provide to the Settlement Administrator an electronic database for
20 the Class Members, containing each Class Member's full name and last-known mailing
21 address, telephone number, the Class Member's Social Security number, start and end
22 dates of employment as a non-exempt or hourly-paid employee of Defendant in California
23 during the Class Period, Workweeks worked during the Class Period, and Workweeks
24 worked during the PAGA Period, as reflected in Defendant's records (collectively, the
25 "Class Member Data" or "Class List"). If any or all of the Class Member Data are
26 unavailable to Defendant, Defendant will use reasonable efforts to deduce or reconstruct
27 the Class Member Data prior to when it must be submitted to the Settlement
28 Administrator and shall so advise the Settlement Administrator and Class Counsel. The

1 Class Member Data will otherwise remain confidential and will not be disclosed to
2 anyone, except in order to carry out the reasonable efforts described in paragraphs 59 and
3 66, or pursuant to Defendant's express written authorization or by order of the Court.

4 b. Within 14 calendar days after receiving the Class Member Data from
5 Defendant, the Settlement Administrator will determine each Class Member's estimated
6 number of Workweeks during the Class Period and each Aggrieved Employee's estimated
7 number of Workweeks during the PAGA Period, as well as the estimated Individual Class
8 Payment and Individual PAGA Payment, and send a Notice to each Class Member and
9 Aggrieved Employee in English and Spanish. The Settlement Administrator will mail this
10 information to all identified Class Members and Aggrieved Employees via regular First-
11 Class U.S. Mail, using the mailing address information provided by Defendant, unless
12 modified by any updated address information that the Settlement Administrator obtains in
13 the course of administration of the Settlement.

14 c. If a Notice is returned with a forwarding address on or before the Response
15 Deadline, the Settlement Administrator will promptly, and not later than 10 calendar days
16 from receipt of the returned Notice, re-mail the Notice to the forwarding address. If a
17 Notice is returned without a forwarding address on or before the Response Deadline, the
18 Settlement Administrator will promptly, and not later than 10 calendar days from receipt
19 of the returned Notice, search for a more current address for the Class Member and/or
20 Aggrieved Employee using Accurint or other reasonable and cost-effective skip trace
21 methods, and re-mail the Notice if a new address is found. The Settlement Administrator
22 will use the Class Member Data and otherwise work with Defendant to find a more
23 current address. The Settlement Administrator will be responsible for taking reasonable
24 steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to
25 with Class Counsel and according to the following deadlines, to trace the mailing address
26 of any Class Member and Aggrieved Employee for whom a Notice is returned without a
27 forwarding address by the U.S. Postal Service as undeliverable. If the Notice is re-mailed,
28 the Settlement Administrator will note for its own records and notify Class Counsel and

1 Defendant's Counsel of the date and address of each such re-mailing as part of a weekly
2 status report provided to the Parties. All counsel of record will be entitled to receive from
3 the Settlement Administrator any updated address information about a Class Member as
4 the Settlement Administrator obtains such information.

5 d. Each week, the Settlement Administrator will provide to all counsel of
6 record a report showing (a) the number of Class Members who have submitted a
7 Workweeks Dispute; (b) the number of Class Members who have submitted timely and
8 valid Requests for Exclusion or timely and complete Notices of Objection; and (c) the
9 number of undeliverable and re-mailed any Notices. Additionally, the Settlement
10 Administrator will provide to counsel for both Parties any updated reports regarding the
11 administration of the Settlement Agreement as needed or requested, and immediately
12 notify the Parties when it receives a request from an individual or any other entity
13 regarding inclusion in the Class and/or Settlement.

14 e. Not later than five court days before the date by which the Plaintiff files his
15 motion for final approval of the Settlement, the Settlement Administrator will serve on the
16 Parties a declaration of due diligence setting forth its compliance with its obligations
17 under this Agreement, which Class Counsel shall file with the Court along with the
18 motion for final approval of the Settlement. Prior to the Final Approval Hearing, the
19 Settlement Administrator will supplement its declaration of due diligence if any material
20 changes occur from the date of the filing of its prior declaration.

21 **59. Objections to Settlement; Opt-outs from Settlement.** Class Members may
22 submit objections to the Class Settlement or opt out of the Class Settlement pursuant to the
23 following procedures:

24 a. **Objections to Settlement.** Any Participating Class Member who wishes
25 to object to any term of the Settlement should submit his, her, or their Notice of Objection
26 to the Settlement Administrator, either using the Notice of Objection Form (Exhibit "B")
27 or a letter in conformity with the requirement set forth in paragraph 24. Alternatively, or
28 in addition to a written objection, any Class Member may also appear at the Final

1 Approval Hearing, personally or through his, her, or their own attorney, to object to the
2 Class Settlement and show cause why the Court should not approve the Class Settlement,
3 or object to the motion for awards of the Enhancement Award to named Plaintiff, and the
4 Class Counsel's Attorneys' Fees and Costs, as set forth in the Notice, whether or not they
5 have objected in writing or notified the Parties that they intend to appear. If a Class
6 Member does not submit a Notice of Objection or appear at the Final Approval Hearing to
7 object, either personally or through counsel, such objection will be deemed waived, unless
8 otherwise ordered by the Court.

9 b. **Request for Exclusion from the Class Settlement.** The Notice will
10 explain that Class Members may exclude themselves from the Class Settlement by
11 mailing to the Settlement Administrator a signed Request for Exclusion Form (Exhibit
12 "C") or a letter in conformity with the requirements set forth in paragraph 33. If a
13 question is raised about the authenticity of a signed Request for Exclusion, the Settlement
14 Administrator will have the right to demand additional proof of the Class Member's
15 identity. A Class Member who timely submits a valid Request for Exclusion will not
16 participate in or be bound by the Class Settlement and the Final Approval Order and
17 Judgment with respect to the Class Settlement, however, they will be bound to their
18 PAGA Settlement if they are an Aggrieved Employee. A Class Member who does not
19 complete and transmit a valid Request for Exclusion in the manner and by the deadline
20 specified above will be bound by all terms and conditions of the Class Settlement,
21 including the release of Released Class Claims, if the Settlement is approved by the Court,
22 and by the Final Approval Order and Judgment with respect to the Class Settlement.

23 c. **Undeliverable.** If the Settlement Administrator is unable to obtain a valid
24 address for a Class Member, and the Settlement Administrator is unable to mail a Class
25 Member their Notice, the Class Member Notice will be considered undeliverable.
26 Nevertheless, Class Members whose Notice is undeliverable will be considered bound by
27 the terms of the Settlement Agreement, including the releases provided therein, in the
28 same manner as other Class Members.

1 d. **Report.** No later than seven calendar days after the Response Deadline,
2 the Settlement Administrator will provide the Parties with a complete and accurate list of
3 the names of all then-identified Participating Class Members, objectors, and opt-outs.

4 60. **Resolution of Disputes.** If a Class Member disputes the Workweeks information
5 shown on his, her, or their Notice, the Class Member must ask the Settlement Administrator to
6 resolve the matter by submitting a timely and valid Workweeks Dispute to the Settlement
7 Administrator, in conformity with the requirements set forth in paragraph 38. In the event of such
8 a dispute, Defendant will have the right to review its payroll and personnel records to verify the
9 correct information. After consultation with Class Counsel, the Class Member, and Defendant's
10 Counsel, the Settlement Administrator will make a determination of the correct number of
11 Workweeks to be credited to the individual, and that determination will be final and binding on
12 the Parties and the Class Member, and non-appealable.

13 61. **No Solicitation of Objection or Request for Exclusion.** Plaintiff agrees that he
14 will not opt out of the Settlement. Neither the Parties nor their respective counsel will solicit or
15 otherwise encourage directly or indirectly any Class Member to object to, or request exclusion
16 from, the Settlement, or move to vacate or appeal from the Final Approval Order and Judgment
17 contemplated to be entered in this Action pursuant to the Settlement.

18 62. **Right of Defendant to Reject Settlement.** If 5% or more of the Class Members
19 validly elect not to participate in the Class Settlement, Defendant will have the right to rescind the
20 Settlement, and the Settlement and all actions taken in its furtherance will be null and void.
21 Defendant will notify Class Counsel of its decision to rescind the Settlement in writing no later
22 than 14 calendar days after the Class Members' deadline for requesting exclusion from the Class
23 Settlement. If Defendant elects to rescind the Settlement, Defendant will pay all reasonable fees
24 and costs incurred by the Settlement Administrator in administering the Settlement up until the
25 date that Defendant gives notice to Class Counsel that it is exercising its right to rescind the
26 Settlement pursuant to this paragraph.

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1 **63. Additional Briefing and Final Approval.**

2 a. Plaintiff will prepare and promptly file thereafter, a motion for final
3 approval of the Settlement, the LWDA Payment, and payment of the Settlement
4 Administration Costs as well as a motion for awards of the Enhancement Award to
5 Plaintiff and the Class Counsel's Attorneys' Fees and Costs pursuant to this Settlement.
6 By way of said motion, Plaintiff will apply for the entry of the Final Approval Order and
7 Judgment, which will provide for, in substantial part, the following:

- 8 i. Approval of the Settlement as fair, reasonable, and adequate, and
9 directing consummation of its terms and provisions;
- 10 ii. Confirming and making final its prior conditional certification of the
11 Class as to Participating Class Members;
- 12 iii. Confirming and making final its prior preliminary appointment of
13 Plaintiff as representatives of the Class;
- 14 iv. Confirming and making final its prior preliminary appointment of
15 Class Counsel as counsel for the Class;
- 16 v. Approval of the application for Attorneys' Fees and Costs to Class
17 Counsel;
- 18 vi. Approval of the application for Enhancement Award to Plaintiff;
- 19 vii. Directing Defendant to fund all amounts due under the Settlement
20 Agreement and ordered by the Court; and
- 21 viii. Entering judgment in this Action, while maintaining continuing
22 jurisdiction to implement the Settlement, in conformity with the
23 Settlement Agreement.

24 b. Either Party or both Parties may file a reply in support of the motion for
25 final approval of the Settlement Administration Costs to the extent that any opposition to
26 the motion is filed. Plaintiff and Class Counsel may file a reply in support of their motion
27 for the Enhancement Award to Plaintiff and payment of the Class Counsel's Attorneys'
28 Fees and Costs.

1 c. The Parties agree that if the Settlement is not approved, in whole or in part,
2 because a court determines that the PAGA Settlement Amount (\$200,000.00) should
3 increase, the portion of the Gross Settlement Amount allocated for payment to the Class
4 will be decreased to account for any increase required for the PAGA Settlement Amount
5 such that the Gross Settlement Amount does not exceed \$3,850,000.00.

6 d. If the Court reduces or otherwise denies the requested Class Counsel's
7 Attorneys' Fees and Costs or the Enhancement Award to Plaintiff, Plaintiff may appeal
8 that ruling. However, an award by the Court or an appellate court of lesser amounts than
9 sought for the Enhancement Award to Plaintiff or Class Counsel's Attorneys' Fees and
10 Costs will not be deemed a material modification of the Settlement and will not entitle
11 Plaintiff or Plaintiff's Counsel to nullify or void the Settlement.

12 e. If the Court does not grant preliminary or final approval of the Settlement,
13 or if the Court's approval of the Settlement is reversed or materially modified on appellate
14 review, the Court will give the Parties a reasonable opportunity to attempt to cure any
15 issues precluding, and to ultimately obtain, Court approval of the Settlement by adjusting
16 or revising the terms of the Settlement and/or filing additional or supplemental briefing in
17 connection with the motions for preliminary and final approval. The Parties will make
18 reasonable efforts to work together to cure any such issues. If the Parties fail to secure
19 preliminary or final approval thereafter, then this Settlement will be, at either Party's
20 discretion, null and void.

21 f. Upon final approval of the Settlement by the Court, the Parties will present
22 to the Court, for its approval and entry, the Judgment. After entry of the Judgment, the
23 Court will have continuing jurisdiction over the Action and the Settlement solely for
24 purposes of (i) enforcing this Agreement; (ii) addressing Settlement administration
25 matters; and (iii) addressing such post-judgment matters as may be appropriate under
26 court rules or applicable law.

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1 **64. Waiver of Right to Appeal.** Provided that the Final Approval Order and
2 Judgment are consistent with the material terms of this Agreement, Plaintiff and Defendant, and
3 their respective counsel hereby waive any and all rights to appeal from the Final Approval Order
4 and Judgment, including all rights to any post-judgment proceeding and appellate proceeding,
5 such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the
6 Final Approval Order and Judgment therefore will become non-appealable at the time it is
7 entered. The waiver of appeal does not include any waiver of the right to oppose any appeal,
8 appellate proceedings, or post-judgment proceedings, or to file a cross-appeal. This paragraph
9 does not preclude Plaintiff or Class Counsel from appealing from a refusal by the Court to award
10 the full Enhancement Award to Plaintiff or the Class Counsel's Attorneys' Fees and Costs sought
11 by them as provided above.

12 **65. Timing of Settlement Payments.**

13 a. Within three calendar days after the Effective Date of the Settlement, as
14 defined in paragraph 10 of this Agreement, the Settlement Administrator will provide
15 Defendant with wire transfer information.

16 b. Within 14 calendar days after the Effective Date of the Settlement, as
17 defined in paragraph 10 of this Agreement, Defendant will transfer to the Settlement
18 Administrator, via wire transfer, the Gross Settlement Amount, plus the Employer Taxes.

19 c. Within seven calendar days after receiving the wire transfer provided in
20 paragraph 65(b), the Settlement Administrator will pay the Individual Class Payments to
21 Participating Class Members, the Individual PAGA Payments to the Aggrieved
22 Employees, the Enhancement Award to the Plaintiff, the LWDA Payment to the LWDA,
23 the Class Counsel's Attorneys' Fees and Costs to Class Counsel, and the Settlement
24 Administration Costs to the Settlement Administrator.

25 d. Funding: Defendant agrees to deposit the Settlement Amount into a
26 Qualified Settlement Fund within 30 days of the Final Approval Order.

27 **66. Validity of Checks.** All Individual Class Payments and Individual PAGA
28 Payments will be valid for 180 calendar days after they are mailed. If a check is returned to the

1 Settlement Administrator within 90 days of initial mailing, the Settlement Administrator will
2 make all reasonable efforts to re-mail it to the Class Member or Aggrieved Employee at his, her,
3 or their correct address. After 180 calendar days have lapsed since the initial mailing of the
4 checks, the checks will be canceled and the Settlement Administrator will distribute all remaining
5 funds represented by the canceled checks to the California State Controller's Office, Unclaimed
6 Property Division in the name of the Class Member and/or Aggrieved Employee, where the Class
7 Member and/or Aggrieved Employee can later claim his, her, or their funds.

8 **67. Effect of Disapproval, Termination, or Cancellation.** If the Court does not
9 grant final approval of the Settlement, or if the Court's final approval of the Settlement is
10 reversed or materially modified on appellate review, then the Settlement will be null and void
11 after the Parties fulfill and exhaust their obligations under paragraph 57(c); if that occurs, the
12 Parties will have no further obligations under the Settlement, including any obligation by
13 Defendant to pay the Gross Settlement Amount. However, Defendant will pay the reasonable
14 fees and expenses of the Settlement Administrator to the date of disapproval, termination, or
15 cancellation. Furthermore, the Preliminary Approval Order, Final Approval Order and Judgment,
16 including any order certifying the Class, will be vacated. The Settlement Agreement and all
17 negotiations, statements, and proceedings relating thereto will be without prejudice to the rights
18 of any of the Parties, all of whom will be restored to their respective positions in the Action
19 before the execution of the Settlement Agreement. Neither this Settlement Agreement, nor any
20 ancillary documents, actions, statements, or filings in furtherance of the Settlement (including all
21 matters associated with the mediation) will be admissible or offered into evidence in the Action or
22 any other action for any purpose. Any documents generated to bring the Settlement into effect
23 will be null and void, and any order or judgment entered by the Court in furtherance of this
24 Settlement Agreement will likewise be treated as void from the beginning.

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MISCELLANEOUS SETTLEMENT PROVISIONS

68. **Authorization of the Parties and Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement agreement. The Parties intend that this Settlement Agreement will be fully enforceable and binding upon all Parties, and that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law.

69. **Confidentiality of Settlement.** Plaintiff and his counsel agree that the terms of this Settlement (including, but not limited to, the Settlement Amount), the negotiations leading to the execution of this Settlement, and the Settlement itself, shall not be discussed with or publicized or promoted to the media (including, without limitation, legal periodicals and publications, such as “Jury Verdicts” or “Law360,” or disclosure of the Settlement or Settlement Amount on any website of Plaintiff’s counsel), or the public at large, without the advance written consent of Defendant. However, nothing herein shall restrict Class Counsel’s obligations to assist Class Members with inquiries regarding the settlement nor including this Action for purposes of adequacy of Class Counsel in future Court filings.

70. **Subsequent Disputes Regarding Settlement Agreement.** The Court will retain jurisdiction over this Settlement. However, any disputes arising out of or relating to this Settlement Agreement will be submitted to Mediator Lynn Frank.

71. **No Waiver.** Nothing in this Settlement will serve as a waiver of future rights and this language will be included in the Notice sent to Class Members.

72. **Fair, Adequate, and Reasonable Settlement.** The Parties agree that the Settlement is a fair, adequate, and reasonable settlement of the Action, Released Class Claims, and Released PAGA Claims, and will so represent to the Court via the unopposed motion for preliminary approval. The Parties also agree that they have arrived at this Settlement after arm’s-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding

1 the fairness and reasonableness of this Settlement Agreement. The Parties have agreed to work
2 together expeditiously and cooperatively to obtain preliminary and final approval of this
3 Settlement.

4 73. **Admissibility of Settlement Agreement.** Notwithstanding any privilege
5 applicable to settlement or mediation proceedings, this Settlement Agreement is a confidential
6 settlement document and may not be admitted into evidence or used in any proceeding except an
7 action, motion, or proceeding to approve, interpret, or enforce the terms of this Settlement.

8 74. **No Admission of Liability.** Neither this Settlement Agreement nor any other
9 documents prepared in connection with this Settlement are in any way an admission of liability by
10 Defendant. Moreover, Defendant denies all liability for any alleged wrongdoing and a statement
11 to this effect will be included in the Notice sent to Class Members.

12 75. **Certification for Settlement Purposes Only.** For the purposes of the Settlement
13 only, the Parties stipulate to the certification of the class whose members are defined in paragraph
14 6. If the Court does not grant preliminary or final approval of the Settlement, this stipulation will
15 have no effect, and class certification will automatically be deemed not to have been granted.
16 The Parties agree that this Settlement stipulation is in no way an admission that class certification
17 is proper under California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil
18 Procedure. The Parties further agree that this stipulation will not be admissible in this or any
19 other proceeding as evidence that a class should be certified as Plaintiff proposes or that
20 Defendant is liable in any way to Plaintiff or the class that Plaintiff alleges. Defendant expressly
21 reserves the right to oppose class certification of any purported class should this Settlement fail to
22 become final and effective.

23 76. **Authority to Act for Parties.** Counsel for all Parties represent and warrant that
24 they are expressly authorized by the Parties whom they represent to negotiate this Settlement
25 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
26 pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents
27 required to effectuate the terms of this Settlement Agreement.

28 77. **Counterparts, Electronic and Facsimile Signatures.** This Settlement

1 Agreement may be executed in one or more counterparts, and each such counterpart will be
2 deemed an original, but all of which taken together will constitute one and the same Settlement
3 Agreement. The Parties agree that this Agreement may be signed electronically via DocuSign or
4 another electronic signature platform. Any signature pages transmitted via facsimile or email
5 PDF(s) will be regarded as original counterpart signature pages.

6 **78. Judgment to be Entered by the Court.** After the Court grants Final Approval as
7 to the Settlement, the Court will enter the Final Approval Order and Judgment in accordance with
8 the terms of this Settlement Agreement. The Parties will provide the Settlement Administrator
9 with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the
10 Settlement Administrator will post the Final Approval Order and Judgment on its website for 60
11 calendar days. This will satisfy California Rules of Court 3.771(b), and no individualized notice
12 of the Final Approval Order and Judgment to the Class will be required.

13 **79. Mutual Full Cooperation.** The Parties agree to fully cooperate with each other in
14 good faith to accomplish the terms of this Settlement, including, but not limited to, execution of
15 such documents and taking such other action as reasonably necessary to implement the terms of
16 this Settlement. The Parties will use their best efforts, including all efforts contemplated by this
17 Settlement and any other efforts that may become necessary by order of the Court, or otherwise,
18 to effectuate this Settlement.

19 **80. No Prior Assignments.** The Parties and their counsel represent, covenant, and
20 warrant they have not directly or indirectly assigned, transferred, encumbered, or purported to
21 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
22 action, cause of action or right herein released and discharged.

23 **81. Applicable Law.** This Settlement Agreement is made under and will be governed
24 and construed in accordance with California law. If any civil action is filed to enforce or interpret
25 any term or provision of this Agreement, or otherwise, the appropriate venue will be a state or
26 federal court of competent jurisdiction located in or covering Stanislaus County in the State of
27 California.

28 **82. Construction.** The Parties agree the terms and conditions of this Settlement are

1 the result of lengthy, intensive, arm's-length negotiations and this Settlement will not be
2 construed in favor of or against any Party by reason of the extent to which any Party or his, her,
3 their, or its counsel participated in the drafting of this Settlement Agreement.

4 **83. Paragraph Titles and Captions.** Paragraph titles and/or captions contained
5 herein are inserted as a matter of convenience and for reference, and in no way define, limit,
6 extend, or describe the scope of the Settlement or any provision of the Settlement.

7 **84. Modification.** The Settlement may not be changed, altered, or modified, except in
8 writing and signed by the Parties, and approved by the Court. The Settlement may not be
9 discharged except by performance in accordance with its terms or by a writing signed by the
10 Parties.

11 **85. Integration Clause.** This Settlement Agreement contains the entire agreement
12 between the Parties relating to the Settlement, and all prior or contemporaneous agreements,
13 understandings, representations, and statements, whether oral or written and whether by a Party or
14 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
15 writing.

16 **86. Severability.** If any provision of this Agreement is unenforceable, for any reason,
17 the remaining provisions will nevertheless be of full force and effect, subject to the limitations set
18 out in paragraphs 55(c) regarding the effect of disapproval, termination, modification, or
19 cancellation by the Court of any material term or condition of this Agreement.

20 **87. Binding on Successors and Assigns.** The Settlement will be binding upon and
21 inure to the benefit of the Parties and their respective predecessors, successors, parents,
22 subsidiaries, affiliates, heirs, trustees, executors, administrators, successors, and assigns and upon
23 any corporate or other entity into or with which any Party hereto may merge, combine, or
24 consolidate.

25 **88. Class Member Signatories.** It is agreed that because the members of the Class
26 are numerous, it is impossible or impracticable to have each Class Member execute the
27 Settlement. The Notice will advise all Class Members of the binding nature of the Class
28 Settlement as to the Participating Class Members, and the release will have the same force and

effect as if this Settlement were executed by each Class Member.

89. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action (including, and not limited to, the deadline to bring the Action to trial under California Code of Civil Procedure § 583.310), except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

90. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement will be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiff and Class Counsel:

David D. Bibiyan
Jeffrey D. Klein
Sarah H. Cohen
Vedang J. Patel
BIBIYAN LAW GROUP, P.C.
8484 Wilshire Boulevard
Suite 500
Beverly Hills, California 90211

To Defendant:

Raymond W. Bertrand, Esq.
PAUL HASTINGS LLP
4655 Executive Drive
Suite 350
San Diego, California 92121

IN WITNESS THEREOF, the Parties knowingly and voluntarily execute this Settlement Agreement as of the date(s) set forth below.

PLAINTIFF:

SANTOS MENDOZA CENDEJAS

Signature: *Santos Mendoza Cendejas*
Santos Mendoza Cendejas (Apr 12, 2024 13:16 PDT)

Date: 04/12/2024

COUNSEL FOR PLAINTIFF AND THE SETTLEMENT CLASS:

BIBIYAN LAW GROUP, P.C.

Signature: *Vedang J. Patel*
David D. Bibiyan
Vedang J. Patel

Date: 4/15/2024

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DEFENDANT:

E. & J. GALLO WINERY

Signature: _____
J. Kenneth Menges
Vice President, General Counsel &
Secretary

Date: _____

COUNSEL FOR DEFENDANT:

PAUL HASTINGS LLP

Signature: _____
Raymond W. Bertrand

Date: _____

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DEFENDANT:

E. & J. GALLO WINERY

Signature: 
J. Kenneth Menges
Vice President, General Counsel &
Secretary

Date: 4/26/2024

COUNSEL FOR DEFENDANT:

PAUL HASTINGS LLP

Signature: 
Raymond W. Bertrand

Date: 4/29/24

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EXHIBIT A

1 **NOTICE OF CLASS ACTION AND PAGA REPRESENTATIVE ACTION**
2 **SETTLEMENT**

3 *Santos Mendoza Cendejas vs. E. & J. Gallo Winery*, Stanislaus Superior Court Case No.
4 CV-22-005396

5 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
6 ***It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

7 **You may be eligible to receive money** from the above-referenced wage-and-hour
8 putative class and representative action lawsuit (“Action”) against E. & J. Gallo Winery. (“Gallo”
9 “the Company,” or “Defendant”). The Action was filed by former Gallo employee Santos
10 Mendoza Cendejas (“Plaintiff”), and seeks unpaid wages, penalties, and other relief for alleged
11 violations of the California Labor Code and California Business and Professions Code section
12 17200, *et seq.*

13 **“Class Members”** means all current and former non-exempt persons directly employed
14 by Defendant and who worked for Defendant as a full-time or part-time Regular, Temporary or
15 Seasonal employee (as defined by Defendant) at any of Defendant’s locations in the State of
16 California at any time during the period between September 16, 2021 through the date the Court
17 grants approval (“Class Period”).

18 **“Aggrieved Employees”** means all current and former non-exempt persons directly
19 employed by Defendant and who worked for Defendant as a full-time or part-time Regular,
20 Temporary or Seasonal employee (as defined by Defendant) at any of Defendant’s locations in
21 the State of California at any time during the period from September 16, 2021 through the end of
22 the Class Period (“PAGA Period”).

23 The Settlement has two main parts: (1) a Class Settlement requiring Gallo to fund
24 Individual Class Payments in exchange for the settlement and resolution of Released Class
25 Claims, and (2) a PAGA Settlement requiring Gallo to fund Individual PAGA Payments and pay
26 penalties to the California Labor & Workforce Development Agency (“LWDA”) in exchange for
27 the settlement and resolution of Released PAGA Claims.

28 Based on Gallo’s records, **your Individual Class Payment is estimated to be**
\$ [REDACTED] **(less employee’s share of taxes and withholding) and your Individual PAGA**
Payment is estimated to be \$ [REDACTED]. These are only estimates and the actual amount you
will receive likely may be different and will depend on a number of factors.

Participating Class Members are eligible for Individual Class Payments under the
Settlement based on the number of weeks that a Class Member performed work in California as
an employee of Defendant in a non-exempt position (“**Workweeks**”) during the Class Period,
based on payroll and time records, hire dates, re-hire dates (as applicable), leave of absence dates,
and termination dates (as applicable). Aggrieved Employees are eligible for Individual PAGA
Payments based on their Workweeks during the PAGA Period.

Based on the Company’s records, **you worked** [REDACTED] **Workweeks** during the Class
Period and **you worked** [REDACTED] **Workweeks** during the PAGA Period. If you believe that you
worked more Workweeks during the Class Period or PAGA Period, you can submit a challenge
by the deadline date. See Section **E.3.** of this Notice.

The Court has already preliminarily approved the Settlement and approved this Notice.
The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights
are affected whether you act or not act. **Read this Notice carefully. You will be deemed to**

1 **have carefully read and understood it.** At the Final Approval Hearing, the Court will decide
2 whether to finally approve the Settlement and how much of the Settlement will be paid to
3 Plaintiff and Plaintiff's attorneys, Bibiyan Law Group, P.C. ("Class Counsel"). The Court will
4 also decide whether to enter a judgment that requires Gallo to make payments under the
5 Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert
6 certain claims against Gallo and other Released Parties. See Section **D.7. and D.8.** of this Notice.

7 **Gallo will not retaliate against you for any actions you take with respect to the**
8 **Settlement.**

9 **A. SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS**
10 **SETTLEMENT**

11 If you worked for Gallo during the Class Period and/or the PAGA Period, these are your
12 options under the Settlement:

13 You Do Not Have to Do 14 Anything to Participate in 15 the Settlement	If you do nothing, you will be a Participating Class Member, and eligible for an Individual Class Payment; if you are an Aggrieved Employee, you will also be eligible for an Individual PAGA Payment. If you are a Participating Class Member, you will give up your right to assert Released Class Claims against Gallo and other Released Parties. If you are an Aggrieved Employee, you will give up your right to assert Released PAGA Claims against Gallo and other Released Parties. See Section D.7. and D.8. of this Notice.
16 You Can Opt Out of the 17 Class Settlement but not 18 the PAGA Settlement The 19 Opt-Out Deadline is 20 [RESPONSE DEADLINE]	If you do not want to participate in the Class Settlement, you can exclude yourself from the Class Settlement by completing and sending a written Request for Exclusion or the accompanying Request for Exclusion Form to the Settlement Administrator. See Section G. of this Notice. Once excluded from the Class Settlement, you will not be a Participating Class Member and no longer be eligible for an Individual Class Payment, you will, however, preserve your right to pursue Released Class Claims that you may have against Gallo and Released Parties. If you are an Aggrieved Employee, you will remain eligible for an Individual PAGA Payment and will give up your right to assert Released PAGA Claims against Gallo and Released Parties. Aggrieved Employees cannot opt out of the PAGA Settlement. See Section D.8 of this Notice.
21 Participating Class 22 Members Can Object to the 23 Class Settlement; Written 24 Objections Must be 25 Submitted by [RESPONSE 26 DEADLINE]	All Class Members who do not opt out of the Class Settlement ("Participating Class Members") can object to the Class Settlement by completing and submitting a written Notice of Objection or the accompanying Notice of Objection Form to the Settlement Administrator or appearing and verbally objecting at the Court's Final Approval Hearing. You are not personally responsible for any payments to Class Counsel or Plaintiff. If you hire your own separate attorney, you may be responsible for fees and costs for that attorney. See Section H. of this Notice.
27 You Can Participate in the 28 [FINAL APPROVAL HEARING DATE TO BE INSERTED] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE] at [TIME] in Department 24 of the Superior Court for the County of Stanislaus, Modesto, California. You do not have to attend but you do have the right to appear in person (or hire an attorney to appear on your behalf at your own cost) to object to the settlement. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section H. and I. of this Notice.

**You Can Dispute the
Number of Workweeks
Credited to You;
Workweeks Disputes Must
be Submitted by
[RESPONSE DEADLINE]**

The amount of your Individual Class Payment depends on how many Workweeks you worked during the Class Period, while the amount of your Individual PAGA Payment (if any) depends how many Workweeks you worked during the PAGA Period. The number of Workweeks you worked according to the Company's records are stated on the first page of this Notice. If you disagree with either of these numbers, you must send a Workweeks Dispute in conformity with the requirements set forth in **Section E.3.** of this Notice.

B. WHAT IS THE ACTION ABOUT?

On November 18, 2022, Plaintiff Santos Mendoza Cendejas filed the civil action entitled *Santos Mendoza Cendejas, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, Plaintiff, vs. E. & J. Gallo Winery, a California corporation; and DOES 1 to 100, inclusive, Defendant*, a , Case No. CV-22-005396 in the Superior Court of the County of Stanislaus, against Defendant ("**Action**"). Plaintiff then amended his complaint to add class action claims for the purposes of seeking approval of the Settlement ("**Operative Complaint**"). The Operative Complaint alleges that Defendant violated California labor laws by (a) failing to pay wages, including overtime premium pay and the minimum wage; (b) failing to provide meal and/or rest periods in accordance with applicable law, including payments equivalent to one hour of the employee's regular rate of pay for missed, short, or late meal and/or rest periods and alleged non- payment of wages for meal periods worked and not taken; (c) omitting certain types of remuneration when calculating an employee's regular rate of pay; (d) failing to pay compensation at employees' final rate of pay for unused vested paid vacation days at the termination of employment and associated penalties thereon; (e) failing to indemnify and/or reimburse employees for all business expenses; (f) failing to maintain accurate, required payroll records; (g) failing to issue compliant, accurate wage statements; (h) failing to issue timely payment of wages during, and upon termination of, employment; (i) failing to provide one day's rest in seven; (j) failing to provide notice of material terms of employment; (k) failing to provide compliant paid sick leave and COVID supplemental sick leave; and (l) failing to provide compliant reporting pay. Based on these alleged violations, Plaintiff has also asserted that Defendant engaged in unfair business practices in violation of the California Business and Professions Code § 17200, *et seq.* and owes civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* ("PAGA").

Defendant strongly denies violating any laws or failing to pay any wages and contends that it complied with all applicable laws.

C. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Plaintiff or Defendant are/is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the cases by agreement (settle the cases) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing the Class Action and PAGA Action Settlement Agreement ("**Settlement**," "**Settlement Agreement**," or "**Agreement**") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a Settlement that is subject to the Court's final approval. Both sides agree the Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

1 Plaintiff and Class Counsel believe that: (1) Gallo has agreed to pay a fair, reasonable, and
2 adequate amount considering the strength of the claims and the risks and uncertainties of
3 continued litigation; and (2) the Settlement is in the best interests of the Class Members,
4 Aggrieved Employees, and the State of California.

5 The Court preliminarily approved the Settlement as fair, reasonable, and adequate;
6 authorized this Notice; and scheduled a hearing to determine whether to grant final approval of
7 the Settlement and enter judgment.

8 **D. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED**
9 **SETTLEMENT?**

10 1. The Gross Settlement Amount is \$3,850,000.00 (“Gross Settlement Amount”).
11 Gallo has agreed to deposit \$3,850,000.00 into an account controlled by the Settlement
12 Administrator for the Settlement (the “Gross Settlement Amount”). The Settlement
13 Administrator will use the Gross Settlement Amount to pay the Individual Class Payments to
14 Participating Class Members, Individual PAGA Payments to Aggrieved Employees,
15 Enhancement Award to Plaintiff, Attorney’s Fees and Costs to Class Counsel, the Settlement
16 Administration Costs to the Settlement Administrator, and LWDA Payment to the LWDA.
17 Assuming the Court grants final approval of the Settlement, Gallo will fund the Gross Settlement
18 Amount plus the employer portion of the payroll taxes due on wage payments made from the Net
19 Settlement Amount to Class Members not more than 14 calendar days after the Effective Date of
20 the Settlement. The Settlement Administrator will make the required payments within seven
21 calendar days after Gallo deposits the Gross Settlement Amount and Employer Taxes.

22 2. Court Approved Deductions from Gross Settlement Amount. At the Final
23 Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following
24 deductions from the Gross Settlement Amount, the amounts of which will be decided by the
25 Court at the Final Approval Hearing:

26 a. Attorneys’ Fees and Costs: Defendant has agreed not to oppose or object to Class
27 Counsel’s request for attorney’s fees of up to one-third (1/3) of the Settlement Amount and actual
28 litigation costs up to \$40,000.00. Any portion of the fee allocation or costs not approved by the
Court will be allocated to the Settlement Amount. If the Court decides to award a different
amount to Class Counsel, this Agreement shall not be voided or nullified.

29 b. Enhancement Award: Up to \$10,000.00 to Plaintiff for prosecuting the Class
30 Action and PAGA Action, working with Class Counsel, and representing the Class, Aggrieved
31 Employees (“**Enhancement Award**”).

32 c. Settlement Administration Costs: Up to \$ [REDACTED] to the Settlement Administrator
33 for its fees and expenses incurred in administering the Settlement (“**Settlement Administration**
34 **Costs**”).

35 d. **PAGA Settlement Amount:** Up to \$200,000.00 for civil penalties under PAGA
36 (“**PAGA Settlement Amount**”), allocated 75% (\$150,000.00) to the LWDA (“**LWDA**
37 **Payment**”) and 25% (\$50,000.00) to the Aggrieved Employees (“**Aggrieved Employees’ PAGA**
38 **Settlement**”) as Individual PAGA Payments, distributed *pro rata* based on their Workweeks
during PAGA Period.

39 3. Net Settlement Amount Distributed to Participating Class Members. After making
40 the deductions provided in **Section D.2** above in amounts approved by the Court, the Settlement
41 Administrator will distribute the rest of the Gross Settlement Amount (the “**Net Settlement**
42 **Amount**”) by making Individual Class Payments to Participating Class Members based *pro rata*
43 on their Workweeks during the Class Period.

1 4. Taxes Owed on Payments to Participating Class Members and Aggrieved
2 Employees. Plaintiff and Gallo are asking the Court to approve an allocation as follows: of 20%
3 of each Individual Class Payment to taxable wages (“wage portion”); 40% of the amount
4 distributed as interest on the unpaid wages; and, 40% of the amount distributed as statutory
5 penalties. The wage portion is subject to employee’s share of withholdings and will be reported
6 on IRS W-2 Forms. (Gallo will separately pay the Employer Taxes it owes on the wage portion.)
7 The Individual PAGA Payments are counted as penalties, rather than wages, for tax purposes.
8 The Settlement Administrator will report the Individual PAGA Payments and the non-wage
9 portions of the Individual Class Payments on IRS 1099-MISC Forms.

10 Although Plaintiff and Defendant have agreed to these allocations, neither side is giving
11 you any advice on whether any payments that you receive from the Settlement are taxable or how
12 much you might owe in taxes. You are responsible for paying all taxes (including penalties and
13 interest on back taxes) on any payments you receive from the Settlement. You should consult a
14 tax advisor if you have any questions about the tax consequences of the Settlement.

15 5. Need to Promptly Cash Payment Checks. The front of every check issued for
16 Individual Class Payments and Individual PAGA Payments will show the date when the check
17 expires (the void date). If you do not cash, deposit, or otherwise negotiate your check by the void
18 date, the check will be automatically canceled, and the monies will be deposited with the
19 California State Controller’s Office, Unclaimed Property Division in your name. If the monies
20 represented by your check are sent to the Controller’s Unclaimed Property Division, you should
21 consult the Division’s instructions on how to retrieve your money at the following website:
22 https://www.sco.ca.gov/upd_form_claim.html

23 6. The Settlement Will be Void if the Court Denies Final Approval. It is possible the
24 Court will decline to grant final approval of the Settlement or decline to enter a judgment. It is
25 also possible the Court will enter a judgment that is reversed on appeal. Plaintiff and Gallo have
26 agreed that, in either case, the Settlement will be void, and that Gallo will not pay any money
27 (other than the Settlement Administrator’s fees and costs up to the date the Settlement is void). In
28 the event that the Settlement is void, the releases of claims contemplated under the Settlement
will also be void.

1 7. Class Settlement and Participating Class Members’ Release of Released Class
2 Claims.

3 “**Class Settlement**” means the settlement and resolution of Released Class Claims by
4 virtue of the Settlement and by operation of the contemplated Final Approval Order and
5 Judgment to be approved by the Court, upon the Effective Date of the Settlement and payment by
6 Defendant to the Settlement Administrator of the full amount of the Gross Settlement Amount
7 and Employer Taxes, Plaintiff and the Participating Class Members will be deemed to have fully,
8 finally, and forever released, settled, compromised, relinquished, and discharged the Released
9 Parties of all Released Class Claims. The period of this release will extend to the limits of the
10 Class Period.

11 “**Released Class Claims**” means any and all claims, known or unknown, contingent or
12 accrued, against every Released Party, that have been, or could have been, asserted and that arise
13 from the facts, matters, transactions or occurrences alleged in the Action, including, without
14 limiting the foregoing, claims for failure to pay overtime; failure to pay minimum wages; failure
15 to provide meal periods or additional pay in lieu thereof; failure to provide rest breaks or
16 additional pay in lieu thereof; failure to timely pay wages upon separation; failure to timely pay
17 wages owed during employment; inaccurate itemized wage statements; unreimbursed business
18 expenses; failure to provide one day's rest in seven; failure to maintain accurate payroll records;
19 failure to provide notice of material terms of employment; failure to provide paid sick leave and
20 COVID supplemental sick leave; failure to provide reporting time pay; violations of California

Labor Code §§ 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 235.5, 245-249, 292, 293, 401, 410, 432, 432.5, 460, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 2800, 2802, 2810.5, 6409.6, 6432, the applicable California Wage Orders, and all related or corresponding federal laws; violation of California Business and Professions Code § 17200, *et seq.*; and claims under California Labor Code § 2698, *et seq.*

“Released Parties” mean E. & J. Gallo Winery and its current and former parents, predecessors or successors, holding companies, affiliated companies, or entities (including, but not limited to, each of their respective owners, shareholders, members, partners, officers, directors, managers, employees, and agents).

8. PAGA Settlement and Aggrieved Employees Release of Released PAGA Claims.

“PAGA Settlement” means the settlement and resolution of all Released PAGA Claims.

By virtue of the Settlement and by operation of the contemplated Final Approval Order and Judgment to be approved by the Court, upon the Effective Date of the Settlement and full funding of the full amount of the Gross Settlement Amount and Employer Taxes by Defendant, Plaintiff, the State of California with respect to the Aggrieved Employees, and Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties (defined above in **Section D.7** of this Notice) of all Released PAGA Claims pertaining to Plaintiff and the Aggrieved Employees, whether known or unknown. The State of California with respect to the Aggrieved Employees, and Aggrieved Employees does not release any claims based on facts occurring outside the PAGA Period.

“Released PAGA Claims” means any and all claims, known or unknown, contingent or accrued, against every Released Party, that have been, or could have been, asserted and that arise from the facts, matters, transactions or occurrences alleged in the Action, including, without limiting the foregoing, claims for failure to pay overtime; failure to pay minimum wages; failure to provide meal periods or additional pay in lieu thereof; failure to provide rest breaks or additional pay in lieu thereof; failure to timely pay wages upon separation; failure to timely pay wages owed during employment; inaccurate itemized wage statements; unreimbursed business expenses; failure to provide one day's rest in seven; failure to maintain accurate payroll records; failure to provide notice of material terms of employment; failure to provide paid sick leave and COVID supplemental sick leave; failure to provide reporting time pay; violations of California Labor Code §§ 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 235.5, 245-249, 292, 293, 401, 410, 432, 432.5, 460, 510, 512, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 2800, 2802, 2810.5, 6409.6, 6432, the applicable California Wage Orders, and all related or corresponding federal laws; violation of California Business and Professions Code § 17200, *et seq.*; and claims under California Labor Code § 2698, *et seq.*

E. HOW WILL THE SETTLEMENT ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Settlement Administrator will calculate and distribute each Participating Class Member's *pro rata* share of the Net Settlement Amount (**“Individual Class Payment(s)”**) based on the number of their Workweeks during the Class Period. Individual Class Payments will be calculated as follows: the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the **“Final Workweek Value,”** and multiply each Participating Class Member's individual Workweeks by the Final Workweek Value to yield his, her, or their Individual Class Payment.

2. Individual PAGA Payments. The Settlement Administrator will calculate and distribute each Aggrieved Employee's *pro rata* share of the Aggrieved Employees' PAGA Settlement ("**Individual PAGA Payment(s)**") based on their Workweeks during the PAGA Period. Individual PAGA Payments will be calculated as follows: the Settlement Administrator will divide the Aggrieved Employees' PAGA Settlement (*i.e.*, 25% of the PAGA Settlement Amount) by the total number of Aggrieved Employee's Workweeks worked during the PAGA Period to yield the "**PAGA Workweek Value**," and multiply each Aggrieved Employee's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his, her, or their Individual PAGA Payment.

3. Workweeks Disputes. The number of Workweeks you worked during the Class Period and PAGA Period, as recorded in the Company's records, are stated on the first page of this Notice. If you believe any of that information is not correct, you can challenge it by sending a letter ("**Workweeks Dispute**") to the Settlement Administrator that: (a) contains the case name and number of the Class Action; (b) contains your full name, signature, address, telephone number, and the last four digits of your Social Security number; (c) clearly states that you dispute the number of Workweeks credited and what you contend is the correct number to be credited to you; (d) includes information and/or attaches documentation supporting the number of Workweeks that you contend should be credited; and (e) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before **[RESPONSE DEADLINE]**. **Section J** of this Notice has the Settlement Administrator's contact information.

The Settlement Administrator will accept the Company's calculation of Workweeks based on the Company's records as accurate unless you send copies of records containing contrary information or the Settlement Administrator discovers a computation error. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve your Workweek Dispute after consultation with you, Class Counsel, and the Company's counsel. The Settlement Administrator's decision will be final. You cannot appeal or otherwise challenge its final decision.

F. HOW WILL I GET PAID?

The Settlement Administrator will issue every Participating Class Member (*i.e.*, every Class Member who does not exclude themselves from the Class Settlement) an Individual Class Payment and will issue every Aggrieved Employee an Individual PAGA Payment by way of checks sent by U.S. mail. The Settlement Administrator may issue a single check, combining the Individual Class Payment and the Individual PAGA Payment if the recipient is eligible for both of those payments.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Settlement Administrator as soon as possible. **Section J of this Notice has the Settlement Administrator's contact information.**

G. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Complete and submit to the Settlement Administrator a written Request for Exclusion Form (attached) or an equivalent letter ("**Request for Exclusion**") to the Settlement Administration that reflects your wish to be excluded from the Class and to not participate in the Class Settlement. It must: (1) contain the case name and number of the Class Action; (2) contain your full name, signature, address, telephone number, and the last four digits of your Social Security number; (3) clearly state that you do not wish to be included in the Class Settlement; and (4) be sent by mail to the Settlement Administrator at the specified address, postmarked on or before **[RESPONSE DEADLINE]**, or it will be invalid. **Section J** of the Notice has the Settlement Administrator's contact information.

1 **H. HOW DO I OBJECT TO THE SETTLEMENT?**

2 Only Participating Class Members have the right to object to the Class Settlement. To do
3 so in writing, complete and submit to the Settlement Administrator a written Notice of Objection
4 Form (attached) or an equivalent letter (“**Notice of Objection**”) to the Settlement Administrator
5 reflecting your objection to the Class Settlement that: (1) contains the case name and number of
6 the Class Action; (2) contains your full name, signature, address, telephone number, and last four
7 digits of your Social Security number; (3) contains a written statement of all grounds for the
8 objection to the Class Settlement accompanied by any legal support for such objection; (4)
9 includes copies of any papers, briefs, or other documents upon which the objection to the Class
10 Settlement is based; (5) contains the name and contact information of any attorney representing
11 you with respect to your objection to the Class Settlement; and (6) is returned by mail to the
12 Settlement Administrator at the specified address, postmarked on or before **[RESPONSE
DEADLINE]**. **Section J.** of this Notice has the Settlement Administrator’s contact information.

13 Alternatively or in addition to submitting a written Notice of Objection, a Participating
14 Class Member can object (or personally retain a lawyer to object at your own cost) by attending
15 the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you
16 object to, why you object, and any facts that support your objection. See **Section I.** of this Notice
(immediately below) for specifics regarding the Final Approval Hearing.

17 **I. CAN I ATTEND THE FINAL APPROVAL HEARING?**

18 You can, but do not have to, attend the Final Approval Hearing on **[DATE TO BE
19 INSERTED]** at **[time]** in Department 24 of the Superior Court for the County of Stanislaus,
20 located at 801 10th Street, 6th floor, Modesto, California 95354. At the hearing, the Court will
21 decide whether to grant final approval of the Settlement and how much of the Gross Settlement
22 Amount will be paid to Class Counsel, Plaintiff, and the Settlement Administrator. The Court
23 will invite comments from objectors, Class Counsel, and counsel for Gallo before making a
24 decision. You can attend (or hire a lawyer to attend).

25 It is possible the Court will reschedule the Final Approval Hearing. You should check the
26 Court’s calendar at <https://www.stanislaus.courts.ca.gov/online-services/court-calendar>
27 beforehand or contact the Settlement Administrator or Class Counsel to verify the date and time
28 of the Final Approval Hearing.

29 **J. HOW CAN I GET MORE INFORMATION?**

30 The Agreement sets forth everything Defendant and Plaintiff have promised to do, and the
31 terms for resolution of the Action, Released Class Claims, and Released PAGA Claims, under the
32 Settlement. The easiest way to read the Agreement, the contemplated Final Approval Order and
33 Judgment, or any other case-related or Settlement-related documents is to go to the Court’s
34 website (<https://stanportal.stanct.org/search>) and enter the Case Number for the Class Action
35 (Case No. CV-22-005396). You can also telephone or send an email to Class Counsel or the
36 Settlement Administrator using the contact information listed below. You can also make an
37 appointment to personally review court documents in the Clerk’s Office at the Courthouse,
38 located at 801 10th Street, 4th Floor, Modesto, California 95354, by calling (209) 530-3100.

39 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
40 ABOUT THE SETTLEMENT.**

41 Class Counsel:

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Jeffrey D. Klien (SBN 297296)

jeff@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Settlement Administrator:

Name of Company: Atticus Administration

Email Address: TO BE INSERTED

Mailing Address: TO BE INSERTED

Telephone: TO BE INSERTED

K. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

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EXHIBIT B

1 **NOTICE OF OBJECTION FORM**

2 *Santos Mendoza Cendejas vs. E. & J. Gallo Winery*, Stanislaus Superior Court Case No.
3 CV-22-005396

4 **Only complete this form if you want to object to the class action settlement** (that is
5 referred to as “Class Settlement” and discussed further in the Notice of Class Action and PAGA
6 Representative Action Settlement that originally accompanied this form) in the above-referenced
7 lawsuit (“Action”).

8 **IF YOU OBJECT TO THE CLASS SETTLEMENT, YOU WILL STILL BE**
9 **INCLUDED IN THE CLASS SETTLEMENT AND WILL RELEASE YOUR RELEASED**
10 **CLASS CLAIMS. IF INSTEAD YOU WISH TO EXCLUDE YOURSELF FROM THE**
11 **CLASS SETTLEMENT, YOU MUST FILL OUT THE SEPARATE FORM TITLED**
12 **“REQUEST FOR EXCLUSION.”**
13 **DO NOT FILL OUT BOTH FORMS.**

14 **MY OBJECTION**

15 I confirm that I worked for Defendant E. & J. Gallo Winery in California as a non-exempt,
16 full-time or part-time Regular, Temporary or Seasonal employee during the period from
17 September 16, 2021 through [REDACTED]. I also confirm that I have received and read the
18 Notice of Class Action and PAGA Representative Action Settlement that originally accompanied
19 this form and that provides information regarding the Class Settlement and PAGA Settlement in
20 the Action.

21 I wish to object to the Class Settlement reached in the Action based on the following
22 grounds (you may attach additional pages if necessary):

23 _____
24 _____
25 _____
26 _____
27 _____

28 Print Full Name of Objector: _____

Last Four Digits of Objector’s Social Security Number: _____

Objector’s Street Address: _____

Objector’s City, State and Zip Code: _____

Objector’s Telephone Number: _____

Full Name and Contact Information of Attorney, If Any, Representing Objector:

Objector’s Signature: _____ Date: _____

29 THIS FORM MUST BE COMPLETED, SIGNED, MAILED TO THE SETTLEMENT
30 ADMINISTRATOR, AND POSTMARKED ON OR BEFORE **[RESPONSE DEADLINE]**.
31 Send this form to the Settlement Administrator at: *Santos Mendoza Cendejas vs. E. & J. Gallo*
32 *Winery* Settlement c/o Atticus Administration, **[Mailing Address]**.

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EXHIBIT C

1 **REQUEST FOR EXCLUSION FORM**

2 *Santos Mendoza Cendejas vs. E. & J. Gallo Winery*, Stanislaus Superior Court Case No.
3 CV-22-005396

4 **Only complete this form if you want to opt out of (not participate in) the class action**
5 **settlement** (that is referred to as "Class Settlement" and discussed further in the Notice of Class
6 Action and PAGA Representative Action Settlement that originally accompanied this form) in the
7 above-referenced lawsuit ("Action").

8 **IF YOU OPT OUT OF THE CLASS SETTLEMENT, YOU WILL NOT RECEIVE**
9 **ANY PAYMENT FROM THE CLASS SETTLEMENT.**

10 **MY REQUEST FOR EXCLUSION**

11 I confirm that I worked for Defendant E. & J. Gallo Winery in California as a non-exempt,
12 full-time or part-time Regular, Temporary or Seasonal employee during the period from
13 September 16, 2021, through [REDACTED]. I also confirm that I have received and read
14 the Notice of Class Action and PAGA Representative Action Settlement that originally
15 accompanied this form and that provides information regarding the Class Settlement and PAGA
16 Settlement in the Action.

17 Please exclude me from the Class Settlement in the Action. **I do not wish to receive any**
18 **payment under the terms of the Class Settlement or to otherwise participate in the Class**
19 **Settlement.** I understand that if I am an Aggrieved Employee (namely, if I worked for Defendant
20 E. & J. Gallo Winery in the State of California as a non-exempt employee at some point during
21 the period from September 16, 2021, through [REDACTED], I will nevertheless remain
22 bound to the PAGA Settlement and be issued payment under the terms of the PAGA Settlement.

23 Print Full Name: _____

24 Last Four Digits of My Social Security Number: _____

25 Street Address: _____

26 City, State and Zip Code: _____

27 Telephone Number: _____

28 My Signature: _____ Date: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE
COMPLETED, SIGNED BY YOU, MAILED TO THE SETTLEMENT ADMINISTRATOR,
AND POSTMARKED ON OR BEFORE **[RESPONSE DEADLINE]**. Send this form to the
Settlement Administrator at: *Santos Mendoza Cendejas vs. E. & J. Gallo Winery* Settlement c/o
Atticus Administration, **[Mailing Add]**