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9
10 **Attorneys for Plaintiff Nicole Priola**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF STANISLAUS**

10 **NICOLE PRIOLA, an individual,**

11 **Plaintiff,**

12 **vs.**

13 **COPPER AND GOLD, LLC, a limited**
14 **liability corporation, PENNY**
15 **NEWMAN GRAIN CO., a corporation;**
16 **and DOES 1-10, inclusive,**

16 **Defendants.**

CASE NO: CV-22-005730

DECLARATION OF VLADIMIR J.
KOZINA IN SUPPORT OF MOTION TO
APPROVE PAGA SETTLEMENT AND
DISMISS ACTION WITH PREJUDICE

Date: April 5, 2024

Time: 8:30 am

Dept.: 24

1 I, Vladimir J. Kozina, declare:

2 1. I have personal knowledge of the matters set forth herein and, if called upon to
3 testify, could and would competently testify thereto.

4 2. I am counsel for Plaintiff, Nicole Priola, who is the Plaintiff herein.

5 3. With this motion the Parties are seeking the court approval of the Parties' PAGA
6 settlement and the dismissal with prejudice of the Action.

7 4. On November 9, 2023, the Parties participated in a full-day mediation before Scott
8 Radovich, Esq. and reached settlement of the PAGA claims. The terms of the settlement are set
9 forth in **Exhibit 1**, which is a true and correct copy of the Parties' proposed Settlement Agreement,
10 which includes an agreement to settle Plaintiff's PAGA claims on her behalf and on behalf of all
11 non-exempt employees employed by Defendant Copper and Gold.

12 5. The Complaint, the Parties' proposed PAGA Settlement Agreement and this
13 motion, have all been served upon the California Labor and Workforce Development Agency. A
14 true and correct copy of the confirmation email from the LWDA of submission of the
15 aforementioned documents is attached hereto as **Exhibit 2**.

16 6. Plaintiff Priola filed a notice with the Labor and Workforce Development Agency
17 ("LWDA"), on October 6, 2022. The LWDA Notice and complaint include potential PAGA
18 claims under Labor Code sections 201, 202, 204, 226(a), 510, 512, 558, 1194, and 1197. The
19 PAGA period in this action commenced on October 10, 2021 ("PAGA Period").

20 7. It is my professional opinion that the settlement reached under the PAGA in this
21 matter is fair, reasonable and just, and that the Court should approve of the proposed order. I have
22 reached that opinion based on the following:

23 a. The settlement seeks resolution of claims by Plaintiff under the PAGA
24 seeking civil penalties for alleged violations of Labor Code sections 201, 202, 204,
25 226(a), 510, 512, 558, 1194, and 1197 as to non-exempt employees of Defendants during
26 the PAGA Period.

1 b. The PAGA claims are derived from two basic sets of facts: 1) Plaintiff
2 received a bonus during her employment that she contends was non-discretionary; and
3 2) Plaintiff was instructed to, on approximately 5 times during her employment by her
4 supervisor who supervised one other individual, work through meal breaks. At all times,
5 Defendants have disputed that there is any merit to the claims alleged in this lawsuit,
6 Defendant Penny Newman has denied being Plaintiff's employer at all, and Defendants
7 have disputed that any amounts are due to the allegedly aggrieved employees.
8 Defendants' primary defense to the bonus claim is that it was under no obligations to
9 include the bonus payments into the regular rate for the payment of overtime and sick
10 time paid to non-exempt employees because the bonus payments were discretionary,
11 annual bonuses. Defendants further denied that Plaintiff was required to work through
12 meal periods, contend that they had compliant policies in place, and that this is evidenced
13 by Plaintiff's time punches.

14 c. After investigation of the claims through informal discovery, and through
15 the mediation before Scott Radovich, I learned the following:

16 i. 19 non-exempt employees, including Plaintiff, were employed by
17 Defendant Copper and Gold during the PAGA Period.

18 ii. During the PAGA period, these employees received a "Bonus"
19 payment once per year in approximately November. Thus, during the PAGA period
20 at issue, there were a maximum of 3 pay periods in which a bonus was paid, resulting
21 in a maximum of 57 overtime violations. This gives a maximum value to the
22 overtime claim of \$2,850.

23 iii. Thus, based on the regular rate related violations, there would be a
24 concomitant number of inaccurate wage statements. The maximum value of these
25 violations would be \$5,700, assuming the court follows the trend at law that the
26 226.3 penalty of \$250 only applies to the failure to provide any wage statement, as
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1 opposed to an inaccurate wage statement. *See Gunther v. Alaska Airlines, Inc.*
2 (2021) 72 Cal.App.5th 334, 355.

3 iv. Of the 19 employees who were employed during the PAGA Period,
4 7 are former employees. Assuming the bonus was ultimately determined to be non-
5 discretionary, as opposed to a discretionary “Thanksgiving bonus” as contended by
6 Defendants, this would lead to an additional \$700 in penalties.

7 v. The meal claims have minimal value for the following reasons. First,
8 in absence of a non-compliant written meal and rest break policy (such as the case
9 here), I consider meal and rest break claims to be individualized and difficult to
10 prove. Further, Plaintiff’s own experience regarding not being furnished meal
11 periods occurred during a limited period of time, is attributable to a single supervisor
12 of only one other employee, and occurred on approximately five total occasions,
13 some of which occurred in the same pay period. Even if these violations occurred
14 in separate pay periods to both Plaintiff and her co-worker, this results in a
15 maximum penalty of \$500 (\$50 per Labor Code section 558 x 10).

16 vi. Plaintiff’s minimum wage claim, which is predicated on the
17 allegation she was required to work through meal periods, if successful would lead
18 to another \$1,000 in civil penalties under Labor Code section 1197.1(a)(1) for the
19 maximum of 10 violative pay periods set forth above.

20 d. Consequently, I believe the maximum value of the PAGA claims to be
21 \$10,750.

22 e. This settlement in fact is more valuable than the typical PAGA settlement of
23 \$1,500.00 because I am not seeking compensation for my fees.

24 8. For these reasons, and accounting for the very real possibility that Defendant’s
25 defense regarding the bonus payments was successful (which would negate all but approximately
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1 \$1,500 in penalties) Plaintiff concluded the \$1,500.00 PAGA settlement, which represents about
2 14 percent of my assessment of maximum value is fair and just.

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4 **Experience of Counsel**

5 9. I, Vladimir J. Kozina, obtained a B.S. degree in Molecular Biology from the
6 University of California, San Diego in 2001. I obtained an M.S. degree from the University of
7 the Pacific in Biological Sciences in 2005. I attended the Laurence Drivon School of Law from
8 2008 through 2012, graduating as Valedictorian. I was admitted to practice in California in 2012
9 and joined Mayall Hurley, P.C. that same year. I became a shareholder in 2020. I have been
10 selected as a “Rising Star” by Super Lawyers Magazine for 2021 and 2022.

11 10. The vast majority of my practice is devoted to plaintiff’s employment matters,
12 including employment discrimination and wage-and-hour actions. My practice also includes
13 employment defense, personal injury, and contract actions. I have substantial involvement in
14 complex litigation like the instant case, and have worked on or am currently working on several
15 wage and hour class action cases with Mayall Hurley, P.C.

16 11. I have also been certified as class counsel, class action and PAGA matters that have
17 been handled by Mayall Hurley, P.C. over the past several years. For instance, Mayall Hurley P.C.
18 has been approved as class counsel in numerous cases, including:

19 a. *Markson, et al. v. CRST International, Inc, et al.*, Eastern District of California
20 Case No. 5:17-cv-01261-VAP-SP;

21 b. *Jacques v. Mike’s Mobile, Inc.*, San Joaquin County Superior Court Case No.
22 STK-CV-UOE-2022-2329;

23 c. *Schmeirer v. Arc Document Solutions, LLC*, San Joaquin County Superior Court
24 Case No. STK-CV-UOE-2019-2008;

25 d. *Starr, et al. v. Schell and Kampeter, Inc.*, San Joaquin County Superior Court Case
26 No. STK-CV-UOE-2021-4585;

- 1 e. *Maldonado, et al. v. Wine & Roses, LLC*, San Joaquin County Superior Court Case
2 No. STK-CV-UOE-2019-2629;
- 3 f. *Flores v. Dart Container Corp., et al*, Eastern District of California Case No. 2:19-
4 cv-00083-WBS-EFB;
- 5 g. *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case
6 No. STK-CV-UOE-2019-6065;
- 7 h. *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No.
8 STK-CV-UOE-2020-1774;
- 9 i. *Modica v. Iron Mountain Information Management Svcs., Inc.*, United States
10 District Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP;
- 11 j. *Magee v. Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court
12 Case No. RG19027231;
- 13 k. *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court
14 Case No. 37-2018-00004296-CU-OE-CTL;
- 15 l. *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern
16 District of California, Case No. 3:18-cv-01696-JAH-WVG;
- 17 m. *Wise v. ULTA Salon, Cosmetics & Fragrance, Inc.*, United States District Court,
18 Eastern District of California, Case No. 1:17-cv-00853-DAD-EPG;
- 19 n. *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court,
20 Case No. RG18906875;
- 21 o. *Mansur v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior
22 Court, Case No. STK-CV-UOW-2018-14631;
- 23 p. *Alderson v. Alameda County Agricultural Fair Association*, Alameda County
24 Superior Court, Case No. RG18912654;
- 25 q. *Terry v. Mare Island Dry Dock, LLC*, Solano County Superior Court, Case No.
26 FCS051650;
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- 1 r. *Mettler, Bender, and Rojas v. Les Schwab Tire Centers of California, Inc.*, San
2 Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476;
3 s. *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County Superior Court,
4 Case No., ST-CV-UOE-2017-5296;
5 t. *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern
6 District of California, Case No. 17-cv-03069-RS;
7 u. *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento County Superior Court,
8 Case No. 34-2017-00217486;
9 v. *Grady, et al. v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Case
10 No. STK-CV-UOE-2017-13867;
11 w. *Kumar v. Forty Niners Stadium Management Company*, Santa Clara County
12 Superior Court, Case No. 17CV3121427;
13 x. *Gast v. Flooring Liquidators, Inc.*, Stanislaus County Superior Court, Case No.
14 2026223;
15 y. *Russell v. KeHe Distributors, Inc.*, United States District Court, Eastern District of
16 California, Case No. 2:17-at-00592;
17 z. *Smith v. Wal-Mart Stores, Inc. et al.*, United States District Court, Northern
18 District of California, Case No. 3:16-cv-02832-JD;
19 aa. *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
20 California, Case No. 2:17-cv-00558-JAM-GGH;
21 bb. *Hugues v. The Morning Star Trucking Company, LLC, et al.*, Yolo County
22 Superior Court Case No. CV16-1215;
23 cc. *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States
24 District Court, Eastern District of California, Case No. 2:16-cv-01747-WBS-KJN;
25 dd. *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States District Court,
26 Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN;
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1 ee. *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District Court,
2 Central District of California, Case No. SACV 15-01618-CJC(DFMx);
3 ff. *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court, Case No.
4 16CECG03355;
5 gg. *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior Court
6 Case No. RG17866256;
7 hh. *Maasrani v. Waterton Hospitality Management*, San Mateo County Superior
8 Court, Case No. 17CIV05470;
9 ii. *Huynh v. Parker-Hannifin Corporation*, Stanislaus County Superior Court, Case
10 No. 2022325;
11 jj. *Moser v. O'Connor Woods Housing Corporation*, San Joaquin County Superior
12 Court, Case No. STK-CV-UOE-2014-0009861;
13 kk. *Bastami v. Semiconductor Components Industries, LLC*, Santa Clara County
14 Superior Court, Case No. 16cv297447;
15 ll. *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court,
16 Case No. BC592580;
17 mm. *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District
18 Court, Eastern District of California, Case No. 1-16-cv-00066-SKO;
19 nn. *Clark v. Arrow Sign Co.*, San Joaquin County Superior Court, Case No. STK-CV-
20 UOE-2016-6457;
21 oo. *Moreno v. B.R. Funsten & Co.*, Solano County Superior Court Case No.
22 FCS046149;
23 pp. *Taylor v. Meadowbrook Meat Company, Inc.*, United States District Court,
24 Northern District of California, Case No. 3:15-cv-00132-LB;
25 qq. *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin
26 County Superior Court, Case No. 39-2012-00288653-CU-OE-STK
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1 rr. *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No.
2 STK-CV-UOE-2016-1264.
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4 I declare the foregoing is true and correct under penalty of perjury under the laws of the State
5 of California. Executed this 21st day of February, 2024, in Lodi, California.

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VLADIMIR J. KOZINA
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Exhibit 1

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This Settlement Agreement and General Release of All Claims ("Agreement") is made by and between Nicole Priola ("Priola" or "Plaintiff") and Copper and Gold, LLC ("Copper and Gold") and Penny Newman Grain Co. ("Penny Newman", collectively "Defendants"), acting on behalf of all affiliates, parents, divisions, subsidiaries, owners, predecessors, successors or related entities (Priola and Defendants, collectively, are the "Parties").

RECITALS

WHEREAS, on or about October 6, 2022, Priola sent a notice to the Labor and Workforce Development Agency alleging that Defendants committed violations of Labor Code sections 201, 202, 204, 226(a), 510, 512, 1194, and 1197 ("PAGA Notice.") Priola cause to be served copies of the PAGA Notice on Defendants by certified mail the same day.

WHEREAS, on or about December 14, 2022, Priola filed a complaint in Stanislaus County Superior Court, Case No. CV-22-005730, against Defendants, asserting eleven causes of action: (1) Disability Discrimination; (2) Failure to Accommodate; (3) Failure to Engage in the Interactive Process; (4) Retaliation for Requesting Accommodation; (5) Failure to Prevent Discrimination and Retaliation; (6) Failure to Furnish Meal Periods; (7) Failure to Pay Overtime; (8) Failure to Pay Minimum Wage; (9) Failure to Pay All Wages at Termination; (10) Failure to Furnish Accurate Itemized Wage Statements; (11) Labor Code Private Attorney General Act Violations ("PAGA"). Hereinafter, this action is referred to as the "Lawsuit."

WHEREAS, on or about June 26, 2023, the Stanislaus County Superior Court granted Defendant's motion to compel Plaintiff's individual claims to arbitration and to stay her PAGA claim pending completion of arbitration.

WHEREAS, Defendants deny each and every allegation made by Priola. Defendant Penny Newman further denies that Priola was its employee at any time.

WHEREAS, the purpose of this Agreement is to settle completely and cause the release, compromise and discharge of Defendants, and all persons and entities being released herein, from every claim and/or cause of action that Priola had or may have against Defendants and all persons and entities being released herein, as well as every other claim that Priola has or could assert against Defendants and all persons and entities being released herein arising out of her employment and/or separation from employment with Defendants, including but not limited to, the PAGA claim asserted in this Lawsuit.

WHEREAS, The Parties understand, acknowledge, and agree that the PAGA Settlement Sum (as defined below) constitutes a compromise of claims for civil penalties for violations of the Labor Code allegedly committed against Priola and/or the Other Aggrieved Employees. For purposes of this Agreement, the phrase "Other Aggrieved Employees" shall refer specifically to all current and former non-exempt employees of Copper and Gold employed between October 10, 2021 and the present ("PAGA Period"). Defendant has identified 18 total Other Aggrieved Employees.

WHEREAS, The Parties acknowledge that Priola has no capacity to resolve individual claims on behalf of the Other Aggrieved Employees and that this Settlement Agreement does not resolve any claims the Other Aggrieved Employees may have on an individual basis. The Parties further acknowledge that the settlement of the PAGA Claim is a compromise of disputed claims and that nothing in this Settlement Agreement shall be construed as an admission by Defendant of any liability for civil penalties.

WHEREAS, The Parties believe and agree that the portion of the PAGA Settlement Sum provides a resolution that appropriately serves the punitive and deterrent purposes of the PAGA, and have arrived at the allocation for the PAGA Settlement Sum after extensive, arms-length negotiations and a full-day mediation, taking into account all relevant factors, present and potential.

WHEREAS, The Parties agree to pursue a Court Order Approving the PAGA Settlement Sum under Labor Code Private Attorneys' General Act of 2004 for the settlement amount of \$1,500 pursuant to California Labor Code §2699(l) through a joint motion to the Court to be prepared initially by Priola's counsel. The Parties further agree that this Settlement Agreement is conditioned on the Court approving that motion and executing the Order proposed therewith.

NOW THEREFORE, in consideration of the facts set forth in the recitals listed above, the covenants and promises in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

AGREEMENT

1. Resolution of Disputes. The Parties have entered into this Agreement as a way of amicably settling any existing or potential disputes concerning Priola's employment with Defendants or termination of employment with Defendants, including, but not limited to, those alleged in the Lawsuit (the "Disputes"). The Parties desire to resolve the above referenced Disputes and all issues raised by the Disputes, without the further expenditure of time or the expense of contested litigation. Additionally, the Parties desire to resolve any known or unknown claims as more fully set forth below. For these reasons, they have entered into this Agreement.

2. Consideration

a. In consideration of the covenants undertaken and releases contained in this Agreement, and provided that Priola satisfies the conditions set forth herein, Defendants agree to pay Thirty Seven Thousand Five-hundred Dollars and No Cents (\$37,500.00) (the "Settlement Amount"). The Settlement Amount will be paid in three checks as follows:

i. \$36,000.00 shall be paid to Priola in connection with the resolution of her individual claims, including all claims asserted on her own behalf in the Lawsuit seeking individual recovery of lost wages, non-economic damages, statutory penalties, interest, damages, restitution, and any other individual recovery (the "Individual Settlement Sum") The Individual Settlement Sum shall be paid as follows:

(1) One Thousand, Eight Hundred Dollars and No Cents (\$1,800.00), less all applicable deductions and withholdings Defendants must make to satisfy their obligations under applicable state, federal and/or local income tax and employment tax laws, made payable to "Nicole Priola" and reflected on an IRS Form W-2. This check represents, and is allocated to, the settlement of Priola's claims for alleged unpaid wages and lost wages;

(2) Fifteen Thousand Seven Hundred and Eighty Dollars and Sixty-Seven Cents (\$15,780.67), without any governmental withholdings or deductions, payable to "Nicole Priola." This amount shall not be subject to any withholding or deduction and is in full and complete settlement for Priola's claims for non-economic damages, potential penalties, and interest. In addition, Mayall Hurley agrees to provide Defendants with a completed W-9 form from Priola. This amount shall be reported on an IRS Form 1099 issued to Priola.

(3) Eighteen Thousand, Four Hundred and Nineteen Dollars and Thirty-Three Cents (\$18,419.33), without any governmental withholdings or deductions, payable to "Mayall Hurley, P.C." This amount shall not be subject to any withholding or deduction and is in full and complete settlement for Priola's claims for attorney's fees and costs. Mayall Hurley agrees to provide Defendants with a completed W-9 form from Mayall Hurley, P.C. This amount shall be reported on an IRS Form 1099 issued to Mayall Hurley, P.C.

b. One Thousand, Five Hundred Dollars (\$1,500) representing civil penalties recoverable pursuant to the PAGA Claim (the "PAGA Settlement Sum"). The PAGA Settlement Sum is allocated as follows:

i. One Thousand, One Hundred and Twenty-Five Dollars (\$1,125), or 75% of the PAGA Settlement Sum, shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code;

ii. Three Hundred and Seventy-Five Dollars (\$375), or 25% of the PAGA Settlement Sum, will be distributed by Defendant to the "Other Aggrieved Employees" in accordance with Section 2699(i) of the California Labor Code. Each Other Aggrieved Employee will receive a proportional share of the Net PAGA Settlement Sum allocated to Other Aggrieved Employees based on the number of pay periods he/she was employed during the PAGA Period. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. For those employees who are no longer employed with or on behalf of Defendant, Defendant will send their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 180 days from the date they are issued by Defendant. Any unclaimed funds after the 180 days shall be remitted to the LWDA;

c. These payments shall be delivered by Defendants to the offices of Priola's attorneys, Mayall Hurley, P.C., within twenty-five (25) calendar days of the following: (1) receipt of this agreement, executed by Priola and her counsel; (2) receipt of the completed W-9 Forms for Priola and her counsel; (3) executing a mutually agreeable PAGA Settlement Agreement; (4) the Court's approval of the PAGA representative claim and order dismissing the claim with prejudice; (5) and an executed Request for Dismissal of the Lawsuit against all Parties, with prejudice as to Priola's individual claims and right to bring a PAGA suit in the future, which will be held by Defendants in trust until payment is issued pursuant to this Paragraph.

d. Priola and her attorneys have directed that the payments under this Agreement be made as set forth in section 2.a. of this Agreement and agree that they are all solely responsible for any division of the settlement payments amongst themselves or any other attorneys, persons or entities, and Plaintiff and her attorneys agree that Defendants have no liability or obligations with regard to any such division.

e. Defendants make no representations regarding the taxability or legal effect of the payments described in this Paragraph, and Priola is not relying on any statement or representation of Defendants in this regard. Priola will be solely responsible for the payment of any taxes and penalties assessed on the payments and will defend, indemnify and hold Defendants free and harmless from and against any claims relating to the taxability, if any, of the payment.

3. No Pending Other Lawsuits/Claims And Covenant Not To Sue. Priola represents that, with the exception of the Lawsuit (and the October 6, 2022, letter to the LWDA and her DFEH Charge No. 202209-18185209, for which Charge Priola sought an immediate case closure and right to sue), she has not filed any complaint, claims, charges or actions against Defendants or the Released Parties (defined below) with any state, federal or local agency or court, and that Priola will not do so at any time hereafter with respect to the claims released herein, alleged in the Lawsuit or otherwise arising out of her employment with Defendants.

4. Dismissal. In exchange for the consideration referenced in Paragraph 2, Priola's counsel will provide Defendants' counsel with a fully executed Stipulation for Dismissal of the Lawsuit against all Parties, with prejudice as to Priola's individual claims and right to bring a PAGA suit in the future, and will cooperate in reaching a long-form PAGA settlement and in obtaining Court approval of the PAGA representative settlement. If the Stanislaus County Superior Court fails or refuses to approve and enter dismissal as described herein, Priola, Defendants, and their counsel shall cooperate fully, completely and promptly to sign such documents, stipulations or requests as the superior court deems necessary or appropriate to secure the dismissal of Priola's claims in the Action including the approval of the Court to dismiss the PAGA representative claim.

5. Limited Release Relating to the PAGA Claim. Upon approval of the PAGA Settlement and payment of the PAGA Settlement Sum., the LWDA and each Other Aggrieved Employee, including Plaintiff, discharge Defendants and each of their affiliates, parents, divisions, owners, subsidiaries, related entities, successors, predecessors, and business concerns, past and present, and each of them, as well as each of their stockholders, partners, trustees, members, managers, directors, officers, agents, attorneys, assigns, servants and current and former employees, insurers, past and present, and each of them (collectively referred to as "Releasees") from any and all claims seeking civil penalties under the California Labor Code predicated on the

facts and theories outlined in the PAGA Notice and/or based on the PAGA Claim asserted in the Action or that could have been asserted in the Action, during the PAGA Period (the "PAGA Released Claims"). The PAGA Released Claims specifically include, but are not limited to, claims for violations of Labor Code sections 201, 202, 204, 226(a), 510, 512, 1194, and 1197 based on the same facts and theories outlined in the PAGA Notice and/or asserted in the PAGA Claim.

6. Court Approval. The Parties understand and agree that Priola's counsel shall prepare and submit a Joint Motion for Approval of the PAGA Settlement Sum. Should the Court not approve the PAGA Settlement Sum, the Parties shall request leave and work jointly to attempt to remedy/address and concerns of the Court as necessary to obtain the Court's approval.

7. General Release by Priola. In consideration of and in return for the promises and covenants undertaken in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, except as noted below, Priola does hereby acknowledge full and complete satisfaction of and does hereby release, absolve and discharge Defendants' and each of their affiliates, parents, divisions, owners, subsidiaries, related entities, successors, predecessors, and business concerns, past and present, and each of them, as well as each of their stockholders, partners, trustees, members, managers, directors, officers, agents, attorneys, assigns, servants and current and former employees, insurers, past and present, and each of them (collectively referred to as "Releasees") from any and all claims, charges, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, grievances, wages, vacation payments, severance payments, obligations, commissions, overtime payments, penalties, debts, profit sharing claims, expenses, damages, judgments, orders and liabilities of whatever kind or nature in state or federal law, equity or otherwise, whether known or unknown to Priola (collectively, the "Claims"), which Priola now owns or holds or has at any time owned or held as against Releasees, or any of them, including specifically but not exclusively and without limiting the generality of the foregoing, any and all Claims known or unknown, suspected or unsuspected: (1) arising out of Priola's employment with Defendants or separation of that employment; or (2) arising out of or in any way connected with any claim, loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of Releasees, or any of them, committed or omitted on or before the date this Agreement is executed by Priola. Also, without limiting the generality of the foregoing, Priola specifically releases Releasees from any claim for attorneys' fees.

Priola also specifically agrees and acknowledges Priola is waiving any right to recovery based on common law or statutory state or federal age, sex, race, color, national origin, marital status, religion, veteran status, disability, sexual orientation, medical condition or other anti-discrimination laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, the Older Workers' Benefits Protection Act (OWBPA), the Family and Medical Leave Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act (except as specified below), the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act (Cal. Government Code § 12900, et seq.), the California Family Rights Act (Cal. Government Code § 12945.1, et seq.), the Unruh Civil Rights Act, the California Labor Code (to the maximum extent permitted by law), Industrial Welfare Commission Wage Order, and all other state laws and local ordinances, all as amended, whether such claim be based upon an action filed by Priola or by a governmental agency; provided, however, that nothing herein waives, releases,

discharges, applies to, or covers, any claim that Priola may have (1) under COBRA or (2) under any vested ERISA benefit.

This Release does not apply to any claim that as a matter of law cannot be released, including but not limited to, claims for unemployment insurance benefits and workers' compensation claims. Defendants agree that this Agreement and the settlement amount will have no impact upon, and will not offset or constitute a credit against any recovery made in any associated or related workers' compensation case; provided, however, that Defendants' workers' compensation insurance carrier has full rights to determine the compensability of any such workers' compensation claim and to apply any offset or credit allowed by law. Priola represents that she has not filed a workers' compensation case to date; however, Defendants will not seek to override any applicable workers' compensation law in any way. This Agreement does not include rights or claims that may arise after the date Priola executes this Agreement.

Moreover, nothing in this Release, including but not limited to the release of claims and the promise not to sue, generally prevents Priola from filing a charge or complaint with or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, the National Labor Relations Board, the California Civil Rights Department, or any other federal, state or local agency charged with the enforcement of any laws, or from exercising rights under Section 7 of the National Labor Relations Act to engage in joint activity with other employees, although by signing this release Priola is waiving any right to individual relief based on claims asserted in such a charge or complaint except where such a waiver is prohibited by law. Nothing contained herein shall be construed to affect the validity or enforceability of the separate PAGA Settlement Agreement.

8. Waiver of Civil Code Section 1542. It is the intention of the Parties in executing this instrument that it will be effective as a bar to each and every Claim specified in this Agreement. In furtherance of this intention, Priola hereby expressly waives any and all rights and benefits conferred upon Priola by the provisions of Section 1542 of the California Civil Code, and expressly consents that this Agreement will be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected Claims, if any, as well as those relating to any other Claims hereinabove specified. Section 1542 provides:

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

Having been so apprised, Priola nevertheless hereby voluntarily elects to and does waive the rights described in Civil Code Section 1542, and elects to assume all risks for Claims that now exist in her favor, known or unknown.

9. No Further Compensation Due. Priola agrees that the Settlement Amount shall constitute the entire amount of consideration provided to her arising under this Agreement and that she shall not seek any further compensation for any other claimed damages, losses, liabilities, costs

or attorneys' fees in connection with the Disputes or relating to her employment with Defendants or this Agreement. Priola further agrees that, upon receipt of the Settlement Amount, she shall have been paid all wages and all other monies due and owing to her arising out of her employment with Defendants, and agrees that she is not entitled to any additional compensation or wages from CCI, including without limitation, all minimum wage, overtime, bonuses, meal and rest period premiums, business expenses, vacation pay, and/or employment benefits owed pursuant to statute, law, or as a result of any agreement with CCI. Priola further acknowledges that California Labor Code § 206.5 is not applicable. That section provides in pertinent part as follows:

No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an event on wages to be earned, unless payment of such wages has been made.

10. Neutral Reference. Priola will instruct prospective employers that any requests for information concerning her employment with Defendants are to be directed to Marjorie Bynion, who will confirm, or cause to be confirmed only Priola's dates of employment and position held and nothing more.

11. Confidentiality. Other than as required for purposes of obtaining approval of the PAGA Settlement Sum by the Court, Priola agrees to keep the existence and terms of this Agreement completely confidential, except that Priola may disclose this Agreement to her spouse, attorneys, accountants, and tax preparers, provided that any such individuals to whom the terms of this Agreement are disclosed are advised that this Agreement, and its terms, are confidential and are not to be disclosed. Should anyone not authorized herein to know of the terms of this Agreement ask Priola about the status of her case, she will respond only that the matter has been resolved.

12. Medicare. This Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec. 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties acknowledge and understand that any present or future action or decision by Centers for Medicare & Medicaid Services (CMS) (this term includes any related agency representing Medicare's interests) or Medicare on this settlement, or Priola's eligibility or entitlement to Medicare or Medicare payments, will not render this Agreement void or ineffective, or in any way affect the finality of this liability settlement. Priola is responsible for the payment of all Medicare liens. Plaintiff warrants that there are no medical liens related to her claims in the Lawsuit.

13. Choice of Law. This Agreement shall be construed in accordance with, and be deemed governed by, the laws of the State of California, without regard to its conflict of laws provisions.

14. Non-Admission. Even though Defendants will provide consideration for Priola to release all claims as set forth above. Defendants do not admit that they engaged in any unlawful or improper conduct toward Priola. Priola agrees that this Agreement shall not be construed as an admission by Defendants that they have violated any statute, law or regulation, breached any contract or agreement, or engaged in any improper conduct.

15. General Terms And Conditions.

a. If any provision of this Agreement or any application of any provision of this Agreement is held invalid (other than the Release provisions contained in Paragraph 5), the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable.

b. Priola represents and warrants that Priola has not assigned or transferred or purported to assign or transfer to any person, firm or corporation any claim, demand, right, damage, liability, debt, account, action, cause of action, or any other matter herein released. Priola agrees to indemnify and hold Defendants harmless against any claim, demand, right, damage, debt, liability, account, action, cause of action, cost or expense, including attorneys' fees or costs, actually paid or incurred, arising out of or in any way connected with any such transfer or assignment or any such purported or claimed transfer or assignment.

c. This Agreement and all covenants and releases set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, predecessors, heirs, assigns, partners, representatives, parent companies, subsidiary companies, affiliates, agents, attorneys, officers, employees, directors and shareholders, past and present.

d. The Parties acknowledge each has read this Agreement, that each fully understands her/its rights, privileges and duties under the Agreement, and that each enters this Agreement freely and voluntarily. The Parties acknowledge that each has had the opportunity to consult with an attorney of her/its choice to explain the terms of this Agreement and the consequences of signing this Agreement.

e. Priola acknowledges she may later discover facts different from, or in addition to, those she now knows or believes to be true with respect to the Claims released in this Agreement, and agrees the Release shall be and remain in effect in all respects as a complete and general release as to all matters released and as to all Releasees, notwithstanding any such different or additional facts.

f. This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused that Party's legal representative to draft any of its provisions.

g. The undersigned each acknowledge and represent that no promise or representation not contained in this Agreement has been made to them and acknowledge and represent that this Agreement contains the entire understanding between the Parties and contains all terms and conditions pertaining to the compromise and settlement of the subjects referenced in this Agreement. Each Party acknowledges that she/it has relied solely upon her/its own legal and tax advisors and that the lawyers, accountants and advisors to the other Party have not given any legal or tax advice to such Party in connection with this Agreement.

h. Defendants and Priola understand and agree that this is an enforceable agreement and that in the event any civil action, litigation, arbitration, or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a

breach of this Agreement, this Agreement is admissible and subject to disclosure in any such proceeding. The parties further acknowledge, agree and stipulate that the Fresno County Superior Court shall have jurisdiction over the parties pursuant to California Code of Civil Procedure Section 664.6 and that this Agreement may be disclosed only to the extent necessary to seek enforcement under section 664.6 if, and, as necessary. The prevailing party in any such enforcement action shall be awarded reasonable attorney’s fees and costs in connection with any such enforcement action.

i. Any modifications to this Agreement must be made in writing and be signed by Priola and an authorized representative of Defendants.

16. Effective Date of This Agreement. Priola acknowledges that she has been offered at least seven (7) days including five (5) business days to consult with her attorney about this Settlement Agreement and the execution thereof, and that, if signed sooner, that Priola voluntarily and knowingly did so of her own free will.

17. Effective Signature. The parties agree that, in the interest of time, this Agreement may be signed in faxed or scanned or electronic counterparts, which shall have the same force and effect as an original signature. The Parties have also agreed that electronic signatures may be used under DocuSign, an electronic technology, to expedite the execution of this Agreement, and that such electronic signatures shall be deemed original signatures.

PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

UNDERSTOOD AND AGREED:

Dated: 1/31/2024, 2024

DocuSigned by:
Nicole Priola
0678DD80781834E0...
NICOLE PRIOLA

Dated: _____, 2024

By: _____
COPPER AND GOLD, LLC

Dated: _____, 2024

By: _____
PENNY NEWMAN GRAIN CO.

///

breach of this Agreement, this Agreement is admissible and subject to disclosure in any such proceeding. The parties further acknowledge, agree and stipulate that the Fresno County Superior Court shall have jurisdiction over the parties pursuant to California Code of Civil Procedure Section 664.6 and that this Agreement may be disclosed only to the extent necessary to seek enforcement under section 664.6 if, and, as necessary. The prevailing party in any such enforcement action shall be awarded reasonable attorney's fees and costs in connection with any such enforcement action.

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PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

UNDERSTOOD AND AGREED:

Dated: _____, 2024

NICOLE PRIOLA

Dated: 1/30, 2024

By: 

Glenn L. Albertson
COPPER AND GOLD, LLC

Dated: 1/30, 2024

By: 

Glenn L. Albertson
PENNY NEWMAN GRAIN CO.

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APPROVED AS TO FORM.

Dated: 1/31/2024

MAYALL HURLEY, P.C.

DocuSigned by:
By Vladimir J. Kozina
3F823358E5F7A426
VLADIMIR J. KOZINA
Attorneys for Plaintiff,
NICOLE PRIOLA

Dated: 2/2/2024

BARSAMIAN & MOODY, P.C.

By Catherine M. Houlihan
CATHERINE M. HOULIHAN
PATRICK S. MOODY
Attorneys for Defendant,
COPPER AND GOLD, LLC

Dated:

SAGASER, WATKINS & WIELAND, P.C.

By _____
CHARLES P. HAMAMJIAN
Attorneys for Defendant,
PENNY NEWMAN GRAIN CO.

Exhibit 2