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 JANELLE CARNEY – ATTORNEY AT LAW, APC
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 Attorneys for Plaintiff ILICIA HIGGINBOTHAM
 on behalf of herself and all other aggrieved employees

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

ILICIA HIGGINBOTHAM, an individual, on behalf of herself and other aggrieved employees,

Plaintiff,

VS.

NEWPORT BEACH VINEYARDS & WINERY, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 30-2023-01320469-CU-OE-CXC
Hon. Lon Hurwitz
Dept. CX103

**SUPPLEMENTAL DECLARATION OF
JANELLE CARNEY IN SUPPORT OF
MOTION FOR COURT APPROVAL OF
PAGA SETTLEMENT**

Date: August 30, 2024
Time: 1:30 p.m.
Dept. CX103

Action filed: April 20, 2023

1 I, Janelle Carney, declare:

2 1. I am an attorney duly licensed to practice law before all courts in the State of
3 California. I am the managing partner at Janelle Carney – Attorney at Law, APC (JCAL). I am
4 counsel of record herein and I have personal knowledge of the facts herein. If called as a
5 witness, I could and would competently testify herein. This supplemental declaration is in
6 response to the Court’s ruling on or about April 26, 2024.

7
8 2. *Are there any other matters, including in the pre-filing LWDA stage, that may*
9 *be affected by this settlement?* There no other matters pending against Defendant that will be
10 effected by this settlement.

11
12 3. *As of what date were there 15 pay periods and how many are there now?*
13 The 15 pay periods existed during the time frame of May-July 2022. The time frame is finite
14 due to the way tips were distributed during this time frame and the aggrieved employees affected
15 during this time are easily identifiable.

16
17 4. *The Settlement does not provide a definition or formula to calculate the*
18 *"LWDA Payment".* The parties have prepared and executed an Addendum to the Settlement
19 Agreement to address the split between the LWDA and the aggrieved employees, and given that
20 the tips that were underpaid all occurred on specific dates, the penalties are based on a per pay
21 period basis during the May-July 2022 time frame. A true and correct copy of the Addendum to
22 the Settlement Agreement is attached hereto as **Exhibit 1**.

23
24 5. *The release appears overbroad to the extent it includes "all claims and*
25 *theories" as opposed to claims for penalties pursuant to PAGA.* The release was modified to
26 clarify that it is only for PAGA penalties as demonstrated in the Addendum and is spelled out in
27 the Notice to accompany the checks which is attached to the Addendum as Exhibit 1.

6. *The settlement should provide for the Court's continuing jurisdiction pursuant to CCP § 664.6.* The Addendum added item 11.14 to include the 664.6 provision.

7. The valuation appears to only include the claim for tip pooling. What values and discounts were applied to the other underlying labor code violations alleged?

Exposure Analysis

Tip Pooling

The total exposure for the tip pooling PAGA penalties was \$1,450.00 for initial violation under 558. Accordingly, the \$1,126.07 figure is 78% of the total exposure, demonstrating a fair settlement.

Wage Statement Violations

Plaintiff claims the wage statement did not list the correct amount of wages earned due to the tip issues. To reiterate Plaintiff's theories are as follows: deficient paystubs due (derivative) failure to list the correct gross wages earned which would have included the tip amounts. On the other hand, Defendant argues that its pay stubs are legally compliant, and therefore no such PAGA penalties are owed. Moreover, Defendant argues derivative violations of *Labor Code* § 226 do not give rise to pay stub violations upon which PAGA penalties arise. See *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); see also *Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196 (E.D. Cal. 2017). Defendant further argues that any such alleged violations were inadvertent, and therefore not actionable. See *Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 75 (2011). See also *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056 (2024 which now allows a "good faith" defense on the failure to provide compliant paystubs pursuant to Labor Code § 226.

If Plaintiff were to lose on any of the underlying claims or if the Court were to make the determination that derivative wage statements don't apply, the wage statement penalty claim could be reduced to zero. Taking this into account, Plaintiff believes the reasonable, risk adjusted maximum exposure to Defendant for PAGA penalties relating to the wage statement claim is \$750.00 for each pay period in which there was an underpayment. Taking into account the

arguments above, Plaintiff believes that the risk adjusted value of this claim is \$75.00, or 10% of the reasonable, risk adjusted maximum exposure.

Waiting Time Penalties

The waiting time penalty claim is derivative of the unpaid tips. Plaintiff's values the maximum PAGA penalties related to waiting time penalties based on the minimum wage rates paid to the staff in 2023 for a total exposure of waiting time penalties of \$18,600. The risk with the PAGA penalties is that Defendant might be able to show that no willful withholding of wages occurred or had a good faith defense, which may nullify these penalties altogether. Taking into account the arguments above, Plaintiff believes that the risk adjusted value of this claim is \$1,860.00 or 10% of the reasonable, risk adjusted maximum exposure.

8. No notice has been provided for the Court's review. It should describe what is released by the settlement, in particular, that individual claims are not released. It should also state current employees will not be retaliated against for cashing the check. The proposed notice includes this language. See the Notice to the Addendum attached hereto as **Exhibit 1**.

9. Does the notice need to be translated to a language other than English? No need for the notice to be translated. All of the individuals speak English with ease.

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

Executed at Chino Hills, California on this 16th day of August 2024.

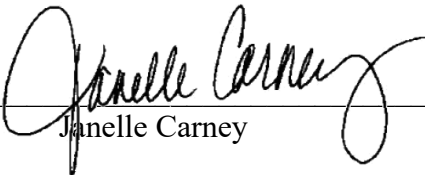

Janelle Carney

Exhibit 1

CDF LABOR LAW LLP
 Timothy M. Freudenberger, State Bar No. 138257
tfreud@cdflaborlaw.com
 Nancy N. (“Niki”) Lubrano, State Bar No. 263037
nlubrano@cdflaborlaw.com
 Brian E. Cole II, State Bar No. 305830
bcole@cdflaborlaw.com
 18300 Von Karman Avenue, Suite 800
 Irvine, CA 92612
 Telephone: (949) 622-1661

Attorneys for Defendant
 NEWPORT BEACH VINEYARDS & WINERY, LLC

Janelle Carney, Esq. (Bar No. 201570)
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 JANELLE CARNEY – ATTORNEY AT LAW, APC
 14758 Pipeline Ave., Suite E, 2nd Fl.
 Chino Hills, CA 91709
 Tel.: (909) 521-9609; Fax: (909) 393-0471

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ILICIA HIGGINBOTHAM, an individual, on
 behalf of herself and other aggrieved
 employees,

Plaintiff,

vs.

NEWPORT BEACH VINEYARDS &
 WINERY, LLC, a California limited liability
 company; and DOES 1 through 100, inclusive,

Defendant.

) Case No. 30-2023-01320469-CU-OE-CXC

) Assigned for All Purposes To:

) Judge: Lon F. Hurwitz

) Dept: CX103

) **ADDENDUM TO JOINT STIPULATION**
) **OF SETTLEMENT AND RELEASE OF**
) **PAGA ACTION DATED NOVEMBER 17,**
) **2023**

) Action Filed: April 20, 2023

This Addendum to the Joint Stipulation of Settlement and Release of PAGA Action (“Agreement”) is made and entered into between Plaintiff Ilicia Higginbotham (“Plaintiff”), individually and on behalf of the proposed PAGA Group, (defined below), and Defendant Newport Beach Vineyards & Winery, LLC, a California limited liability company (“Defendant”) (collectively, the “Parties”). This Addendum is to resolve issues raised by the Court in the April 26, 2024 order of the Court.

ADDENDUM TO THE AGREEMENT

1.9 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed upon settlement amount totaling \$1,164.07, in full settlement of the Released Claims asserted in this case, which includes the payment to the LWDA and payments to the individual PAGA Members. In no event shall Defendant be required to pay more than the Gross Settlement Amount.

Is Amended to:

1.9 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed upon settlement amount totaling \$1,164.07, in full settlement of the Released Claims asserted in this case, which includes the payment to the LWDA and payments to the individual PAGA Members. In no event shall Defendant be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount shall be distributed as follows:

75% or \$873.05 to the LWDA (the “LWDA Payment”); and
25% or \$291.02 to the Aggrieved Employees.

1.18 **Pay Periods.** “Pay Periods” means the number of pay periods a PAGA Member was employed during the PAGA Period.

Is Amended to:

1.18 **Pay Periods.** “Pay Periods” means the number of pay periods a PAGA Member was employed during the PAGA Period and allegedly had their tips earned but not paid out.

1.20 **Released Claims.** “Released Claims” shall mean all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the

PAGA Period, including but not limited to Penalties pursuant to PAGA under California Labor Code sections 200 *et seq.*, 201-204, 205.5, 210, 218.6, 226, 226.3, 226.7, 256, 351, 353, 510, 558, 1174, 1194, 1194.2, 1197, 1198, and 2699, and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendant's alleged failure to: (a) pay proper wages and overtime compensation, (b) pay all wages, (c) properly maintain and submit accurate itemized wage statements, (d) timely pay all wages upon separation of employment, and (e) for violations of Labor Code sections 351 and 353. The Released Claims are only releasing the PAGA liability and the underlying wage claims to the extent such exist are not waived by virtue of this Agreement.

Is Amended to:

1.20 **Released Claims.** "Released Claims" shall mean all claims for penalties that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, pursuant to PAGA under California Labor Code sections 200 *et seq.*, 201-204, 205.5, 210, 218.6, 226, 226.3, 226.7, 256, 351, 353, 510, 558, 1174, 1194, 1194.2, 1197, 1198, and 2699, and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendant's alleged failure to: (a) pay proper wages and overtime compensation, (b) pay all wages, (c) properly maintain and submit accurate itemized wage statements, (d) timely pay all wages upon separation of employment, and (e) for violations of Labor Code sections 351 and 353. The Released Claims are only releasing the claims for penalties under PAGA . The underlying wage claims, to the extent such exist, are not waived by virtue of this Agreement.

5.2 **Payments to Settlement Group Members.** Each Settlement Group Member shall be eligible to receive an Individual Settlement Payment. The Parties understand that Settlement Group Members who receive an Individual Settlement Payment pursuant to this Agreement will receive a IRS form 1099 reflecting the payment of the PAGA settlement payment and shall be solely responsible for any and all other individual tax obligations associated with the payment.

Is Amended to:

5.2 **Payments to Settlement Group Members.** Each Settlement Group Member shall be eligible to receive an Individual Settlement Payment. The Parties understand that Settlement Group Members who receive an Individual Settlement Payment pursuant to this Agreement will receive a IRS form 1099 from Defendant, reflecting the payment of the PAGA settlement payment and shall be solely responsible for any and all other individual tax obligations associated with the payment. In addition to the above, Defendant will also send the attached Notice to the employees. (See **Exhibit 1**)

Added to the Agreement:

11.14 **Enforceable Obligations.** This Agreement will be valid, binding and legally enforceable in accordance with its terms and California Code of Civil Procedure Section 664.6.

11.15 **Related Cases.** The Parties confirm there are no other active civil cases, arbitration matters, or any other legal proceedings which would be implicated by this Agreement.

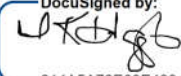
IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: August 16, 2024

PLAINTIFF

By: _____

Ilicia Higginbotham

DocuSigned by:

214A5A72E69E428

Dated: August 16, 202 4

JANELLE CARNEY – ATTORNEY AT LAW, APC

By: _____

Janelle Carney
Attorneys for Plaintiff
Ilicia Higginbotham

8/19/2024

1 Dated: August __, 2024

NEWPORT BEACH VINEYARDS & WINERY, LLC

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DocuSigned by:
Marilyn Moriarty
By: B2003EC4A4B4458...
Name: Marilyn Moriarty
Its: Owner/Manager
Newport Beach vineyards and winery

6 Dated: August 19, 2024

CDF LABOR LAW LLP

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By: Nancy N. Lubrano
Nancy N. ("Niki") Lubrano
Attorneys for Defendant
Newport Beach Vineyards & Winery, LLC

Exhibit 1

_____, 2024

[NAME]
[ADDRESS]

Re: *Higginbotham v. Newport Beach Vineyards & Winery, LLC*, Superior Court of California, County of Orange Case No. 30-2023-01320469-CU-OE-CXC.

We are writing to inform you that you are entitled to payment pursuant to the settlement of this lawsuit. On April 20, 2023, Ilicia Higginbotham filed a lawsuit against her former employer, Newport Beach Vineyards & Winery, LLC (“Newport”) seeking civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”). Higginbotham alleges that Newport violated several provisions of the California Labor Code. She claims that Newport failed to properly pay all tips earned, failed to provide accurate pay stubs and failed to pay all wages at the time employment ended. Newport denies that it violated any laws and maintains that it consistently paid employees all wages due.

The settlement covers the following individuals:

- All current and former non-exempt employees of Defendant who were subject to the alleged illegal and unauthorized tip pooling in California during the PAGA Period (February 14, 2022, through _____ (date the Court approves this settlement).)

You are receiving this letter because you were identified as an employee during this time.

To avoid the expense and uncertainty of further litigation, the parties reached an agreement to settle the lawsuit. On _____, the settlement was approved by the Orange County Superior Court.

Under the settlement, all allegedly aggrieved employees will receive a payment representing labor code penalties in an amount according to the number of pay periods they worked for Newport Beach Vineyards & Winery, LLC, between February 14, 2022, through _____. Your settlement check is enclosed.

The release that accompanies this settlement check is as follows:

Released Claims. “Released Claims” shall mean all claims for penalties that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, pursuant to PAGA under California Labor Code sections 200 et seq., 201-204, 205.5, 210, 218.6, 226, 226.3, 226.7, 256, 351, 353, 510, 558, 1174, 1194, 1194.2, 1197, 1198, and 2699, and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendant’s alleged failure to: (a) pay proper wages and overtime compensation, (b) pay all wages, (c) properly maintain and submit accurate itemized wage statements, (d) timely pay all wages upon separation of employment, and (e) for violations of Labor Code sections 351 and 353. The Released Claims are only releasing the claims for penalties under the PAGA

liability. The underlying wage claims, to the extent such exist, are not waived by virtue of this Agreement.

No current employee will be retaliated against for cashing the check.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 14758 Pipeline Avenue, Suite E, Second Floor, Chino Hills, CA 91709-6025.

On August 19, 2024, I served the foregoing document described as:

**SUPPLEMENTAL DECLARATION OF JANELLE CARNEY IN SUPPORT OF
MOTION FOR COURT APPROVAL OF PAGA SETTLEMENT**

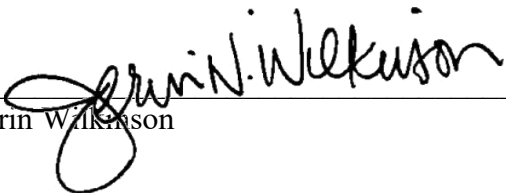
on INTERESTED PARTIES in this action by placing a copy thereof enclosed in a sealed envelope addressed as stated below:

Brian E. Cole, II
Nancy ("Niki") Lubrano
CDF LABOR LAW, LLP
18300 Von Karman Ave., Ste. 800
Irvine, CA 92612
bcole@cdfsflaborlaw.com
nlubrano@cdfsflaborlaw.com
lperez@cdfsflaborlaw.com
manderson@cdfsflaborlaw.com

XX BY E-MAIL: I served the above-mentioned document by serving electronically to each of the above recipients at their respective e-mail addresses and simultaneously sending for electronic filing. My e-address is: Jerin@JanelleCarneyLaw.com.

Executed on August 19, 2024 at Chino Hills, California.

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



Jerin Wilkinson