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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

MELISSA JOSEPHINE FLUTY, on
behalf of herself and others similarly
situated,

Plaintiff,

v.

ZEPEXCO, INC. dba ZEPHYR
EXPRESS, a California Corporation;
WINEBOW, INC., dba WINEBOW, a
Delaware Corporation; CENTRAL
COAST WINE COMPANY, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CU23-05443

CLASS ACTION

Assigned for All Purposes

To: Hon. Christine A. Carringer, Dept 12

**DECLARATION OF ENOCH J. KIM IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points and Authorities;
Declaration Melissa Josephine Fluty; and
[Proposed] Order Granting Plaintiff's Motion for
Preliminary Approval]*

Date: August 13, 2025

Time: 8:30 a.m.

Dept.: 12

Original Complaint Filed: November 17, 2023
First Amended Complaint Filed: January 23, 2024
Trial Date: None Set

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1 filed a First Amended Complaint adding a cause of action for penalties under PAGA (“Operative
2 Complaint”).

3 4. Shortly after initiating the Action, the Parties agreed to explore resolution via
4 mediation and engage in informal discovery prior to mediation.

5 **Plaintiff’s Claims And Defendant’s Denials**

6 5. Plaintiff’s claims are based on Defendants’ alleged failure to pay wages (including
7 overtime and off-the-clock work), failure to provide meal and rest periods, failure to reimburse
8 business expenses, the resulting failure to pay final wages when required and provide accurate wage
9 statements, and largely derivative claims under the Unfair Competition Law (“UCL”) and PAGA.

10 6. Specifically, Plaintiff alleges that Defendants required Plaintiff and Class Members
11 to wear protective gear, including safety vests, when entering the shipping and storage area where
12 the time clocks are located. As such, Plaintiff and Class Members were required to don safety vests,
13 which were kept in a separate location, and walk to the area where the time clocks are located to
14 clock in and out, resulting in approximately three to five minutes of off-the-clock work per day.
15 Plaintiff also alleges that Plaintiff and Class Members were required to respond to work-related calls
16 after having clocked out for the day. Defendants’ practice led to Plaintiff and Class Members not
17 being compensated for all hours worked, resulting in unpaid overtime wages.

18 7. Plaintiff also alleges that Defendants frequently interrupted Plaintiff’s and Class
19 Members’ meal periods with work related tasks and questions that they were told required
20 immediate attention. Accordingly, Defendants’ practice led to Plaintiff and Class Members to suffer
21 from short, late, and interrupted meal periods. Plaintiff also alleges that Defendant failed to pay the
22 legally required premium at their regular rate of pay whenever meal periods were missed,
23 interrupted, or late.

24 8. Plaintiff also alleges that Defendants failed to authorize and permit Plaintiff and
25 Class Members to leave Defendants’ premises during rest periods. Specifically, Plaintiff and Class
26 Members were explicitly told by their supervisors that they were not allowed to leave the premises
27 during their rest period. Furthermore, Plaintiff and Class Members would often have to answer work
28 related questions from their supervisors during their rest periods. Plaintiff also alleges that

1 Defendant failed to pay the legally required premium at their regular rate of pay whenever rest
2 periods were missed, interrupted, or late.

3 9. Additionally, Plaintiff alleges that Defendants required Plaintiff and Class Members
4 to use their personal cellular phones for work-related communications, for which they were not
5 reimbursed. Furthermore, Plaintiff and Class Members occasionally worked from home which
6 required them to use home internet usage. Accordingly, Plaintiff alleges that Defendants failed to
7 reimburse Plaintiff and Class Members for their personal cellular phone and home internet usage,
8 which were required to perform their job duties for Defendants.

9 10. Defendants generally deny all claims alleged in the Action and further deny class
10 and/or representative treatment is appropriate for any purpose other than this Settlement and that
11 they complied with all applicable laws. However, after careful consideration, Defendants have
12 concluded that further litigation would be protracted and expensive and that it is desirable that the
13 Action be fully and finally settled in the manner and upon the terms and conditions herein.

14 **Investigation**

15 11. Before filing the Action, Class Counsel conducted a thorough investigation and
16 researched the facts and circumstances underlying the pertinent issues and applicable law. This
17 required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to
18 the above-described research into the various legal issues involved in the case. After filing the
19 lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the
20 Action, including (1) conducting informal discovery and meeting and conferring with defense
21 counsel about same; (2) reviewing and analyzing records and data, as well as employment-related
22 policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff
23 regarding potential Class Members; (5) researching the applicable law and potential defenses; (6)
24 constructing damage models based on interpretations of California law and the facts and numbers
25 provided by Defendants; and (7) reviewing information provided by Defendants in response to
26 informal discovery and in advance of the mediation. The Parties conducted their own evaluations of
27 the potential recoveries based on the claims alleged in the Action, including consulting experts.

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12. Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement.

Settlement Efforts

13. On August 20, 2024, the Parties participated in an all-day mediation with Brandon McKelvey, a respected and highly experienced mediator in wage and hour class actions. During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks associated with continued litigation and class certification issues, as well as the law and how it applied to the claims in this case. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement.

14. From Class Counsel's review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the Action.

Summary of the Settlement

15. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay a non-reversionary settlement amount of \$619,500.00 (“Gross Settlement Amount” or “GSA”) and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (Ex. 1, ¶ 3.1). The Settlement Agreement defines “Class Member” or “Settlement

Class Member” as a member of the Class: “all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the Class Period,” which is November 17, 2019 through October 19, 2024. (Ex. 1, ¶¶ 1.5, 1.9, and 1.12.) The Settlement Agreement also defines “Aggrieved Employees” as “a person employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the PAGA Period,” which is November 17, 2022 through October 19, 2024. (Ex. 1, ¶¶ 1.4 and 1.31.) The “Net Settlement Amount,” available for distribution to Class Members, is the Gross Settlement Amount, less the LWDA PAGA Payment, Individual PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id.*, Ex. 1, ¶ 1.28.). These amounts are detailed as follows:

- Class Counsel Fees and Litigation Expenses Payment: Up to one-third (1/3) of the GSA, or \$206,500.00, to Class Counsel for attorneys’ fees, and up to \$45,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (Ex. 1, ¶ 3.2.2);
- Class Representative Service Payment: Up to \$5,000.00 to Plaintiff as an enhancement award for service as the class representative (Ex. 1, ¶ 3.2.1);
- Administrator Expenses Payment: Up to \$8,500.00 to the Settlement Administrator for its fees and costs to administer the Settlement (Ex. 1, ¶ 3.2.3);
- PAGA Penalties: \$50,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees (\$12,500.00) and 75% allocated to the LWDA (\$37,500.00) will be paid to the LWDA (“LWDA Payment”) (Ex. 1, ¶ 3.2.5).

16. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be \$304,500.00. (Ex. 1, ¶ 28.) Each Class Member’s share of the Net Settlement Amount will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Ex. 1, ¶ 3.2.4.1). For the 303 Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is \$1,004.95. If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Ex. 1, ¶ 3.2.1-3.2.5.2).

1 17. The Class Notice is attached to the Settlement Agreement as Exhibit A. The
2 Settlement Administrator will mail the Class Notice to all Class Members no later than 14 days after
3 receiving the Class Data. (Ex. 1, ¶ 7.4.2.) The Class Notice includes a summary of the case and
4 settlement terms and provides Class Members with detailed instructions on how to exclude
5 themselves, object to the settlement, and dispute the number of workweeks and/or pay periods
6 attributed to each Class Member per Defendant’s records. (Ex. 1, ¶¶ 7.4-7.7.3). Class Members will
7 have 60 days from the mailing of the Class Notice to opt out of or object to the Settlement or to
8 dispute the number of work weeks and/or pay periods; Class Members will have an additional 14
9 days if they receive a re-mailed Notice. (Ex. 1, ¶¶ 7.5.1-7.7.3).

10 **Certification for Settlement Purposes Only is Appropriate**

11 18. Plaintiff alleges that the proposed Class satisfies the criteria for certification of a
12 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
13 Defendants have agreed to the conditional certification of the class for settlement purposes only.
14 Defendants do not concede that certification is appropriate outside of this Settlement and preserve
15 all rights to oppose certification if, for any reason, the settlement does not become effective. In
16 general, courts may take a proposed settlement into account in evaluating the propriety of class
17 certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser
18 standard” of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court
19 should take into consideration the fact that the Parties have settled their claims and stipulated to
20 certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

21 19. Numerosity and Ascertainability. The putative Class is so numerous that joinder of
22 all members is impractical. Class Members are all current and former non-exempt, hourly employees
23 of Defendants employed in California during the Class Period (November 17, 2019 through October
24 19, 2024). Defendants have identified 303 Class Members based on review of its payroll and
25 personnel records. Thus, there is numerosity and ascertainability.

26 20. Well-Defined Community of Interest. Plaintiff contends, and Defendants do not
27 dispute for settlement purposes only, that common issues of fact and law predominate as to each of
28 the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*,

1 a determination about Defendants' alleged failure to provide meal and rest periods, failure to pay
2 minimum wages due to allegedly common off-the-clock work policies, failure to pay overtime,
3 failure to reimburse business expenses; the resulting failure to pay final wages when required and
4 to provide accurate wage statements; and largely derivative claims under the UCL and PAGA.
5 Plaintiff contends Defendants' practices affected Class Members in the same way and present
6 questions that are suitable for common adjudication because all Class Members were subject to the
7 same employment policies and practices. The outcome of litigation in this matter depends upon
8 questions that are common to Class Members.

9 21. Typicality. The class representatives' claims are typical when they arise from the
10 same event, practice, or course of conduct that gives rise to the claims of other putative Class
11 Members, and if their claims rest on the same legal theories. Here, Plaintiff alleges that her claims
12 are typical of Class Members' claims because they arose from the same factual basis and are based
13 on the same legal theories. Plaintiff and Class Members were employed by Defendants during the
14 Class Period and subject to the allegedly unlawful meal and rest policies and pay practices at issue
15 in this litigation. Thus, the typicality requirement is satisfied.

16 22. Adequacy. Plaintiff's interests are aligned with those of the Class Members, as she
17 has suffered the same injuries as the Class Members and has no conflicts of interest. Plaintiff has
18 not shrunk from this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and
19 energy to litigating this action and effectuating a settlement. Furthermore, as set forth below, Class
20 Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously
21 represented the interests of the class in litigating this case and have no conflicts of interest.
22 Accordingly, the adequacy requirement is satisfied.

23 23. Predominance and Superiority. Plaintiff contends that individualized issues do not
24 predominate over the issues of law and fact that are common to the Class as a whole. As explained,
25 *supra*, Plaintiff allege there are common issues of law and fact given that Plaintiff and all Class
26 Members were subjected to the same policies and pay practices during the relevant time period.
27 Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime,
28 reimbursement for business expenses, and penalties for work performed as non-exempt employees

1 for Defendants. Plaintiff alleges that these issues are suitable for common adjudication because all
2 Class Members were allegedly subject to the same employment policies, and Plaintiff contends the
3 practices applied uniformly to all Class Members.

4 24. Plaintiff contends that class resolution is superior to other available methods for the
5 fair and efficient adjudication of the controversy as there is little interest or incentive for Class
6 Members to individually control the prosecution of separate actions. Although the alleged injury
7 resulting from Defendants' policies and practices are allegedly real and significant, the cost of
8 individually litigating each such case against Defendants would easily exceed the value of any relief
9 that could be obtained by any one Class Member individually. If Class Members are forced to litigate
10 their claims individually this would result in over 303 individual actions against Defendants. Here,
11 the alternative methods of resolution are individual suits for relatively small amounts. Hence, an
12 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
13 dwarf a potential recovery.

14 **The Settlement is Fair, Adequate and Reasonable**

15 25. In deciding whether to approve a proposed class action settlement, the Court must
16 find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of
17 approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as
18 "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
20 the extent of discovery completed and the stage of the proceedings, the experience and views of
21 counsel, the presence of a governmental participant, and the reaction of the Class Members to the
22 proposed settlement." *Id.* The Settlement satisfies all of these requirements.

23 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.**

24 26. The proposed Settlement was reached as a result of arm's length negotiations after
25 the completion of pertinent discovery and the exchange of necessary class data. The negotiations
26 have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions §
27 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a
28 proposed class action settlement is fair when certain factors are present, particularly evidence that

1 the settlement is the product of arms-length negotiation, untainted by collusion.”). Although
2 Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that there were
3 substantial risks and uncertainty in proceeding with litigation. As described above, Defendants
4 presented multiple defenses to Plaintiff’s claims, both on the merits and with respect to class
5 certification. Thus, while Plaintiff was prepared to litigate these claims through class certification,
6 and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured
7 negotiations were non-collusive and well-informed.

8 **B. Extent of Discovery and Stage of Proceedings.**

9 27. As stated above, the Parties engaged in substantial informal discovery before the
10 Settlement was reached to allow them to fully evaluate the class claims and Defendants’ defenses.
11 This litigation has reached the stage where the Parties have a clear view of their respective strengths
12 and weaknesses.

13 **C. Strength of Plaintiff’s Case and the Risk, Expense, Complexity and Likely Duration of**
14 **Any Litigation.**

15 28. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the
16 Action have merit, they also acknowledge the expense and delay of continued litigation. Although
17 the Parties engaged in significant informal discovery in advance of mediation, the Parties still had
18 significant discovery to complete had the matter not settled. This would have required expenditure
19 of substantial time and resources by both Parties that would have very likely spanned several years.
20 Even if Plaintiff were to certify the classes, the parties would incur considerably more attorney fees
21 and costs through a possible decertification motion, trial, and possible appeal. This Settlement
22 avoids those risks and the accompanying expense.

23 **D. The Risk of Maintaining Class Action Status Through Trial.**

24 29. Plaintiff has not yet filed her motion for class certification, and as such, the extent to
25 which Plaintiff proposed classes were certifiable is somewhat speculative. Absent settlement, there
26 is a risk that there would not be a certified class at the time of trial, or if there were, it could consist
27 of a significantly smaller group of employees than the proposed Settlement Class resulting in less
28 overall recovery.

1 30. Finally, in class actions, decertification is always a possibility, and there is always a
2 risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat.*
3 *Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions
4 and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial
5 would have also required expert witnesses, the accrual of extensive litigation costs, and the
6 commitment of extensive further time and financial resources. Finally, given the complexity and
7 unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy
8 and costly appeal. An appeal would result in further delay for the Class Members who have already
9 waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any
10 litigation, and this Settlement was the product of compromise accounting for those risks and that
11 uncertainty.

12 **E. The Presence of a Governmental Participant.**

13 31. On March 18, 2025, Plaintiff submitted the Class Action and PAGA Settlement
14 Agreement and Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement
15 and supporting documents to the LWDA. A true and correct copy of the confirmatory email from
16 the LWDA is attached hereto as **Exhibit 2.**

17 **F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.**

18 32. Because the class consists of numerous employees, it was unlikely that the potential
19 monetary claims of individual Class Members would have proved viable without the class-action
20 mechanism. The Settlement Agreement should be approved in light of two California appellate
21 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
22 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

23 33. The strength of the Plaintiff's case in light of the settlement amount is deemed by
24 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
25 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay minimum
26 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage
27 statements, failed to pay all wages upon termination, and failed to reimburse for business expenses,
28 all in violation of California law. Plaintiff seeks related violations of California's Business &

1 Professions Code, penalties pursuant to Labor Code § 2699 *et seq.* Summary calculations for
2 estimated liability for each of these claims follow.

3 Failure to Pay Minimum Wages and Overtime:

4 34. Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members at least
5 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
6 eight hours in a day and 40 hours in a week. Specifically, Plaintiff and Class Members were required
7 to wear protective gear, including safety vests, when entering the shipping and storage area where
8 the time clocks are located. As such, Plaintiff and Class Members were required to don safety vests,
9 which were kept in a separate location, and walk to the area where the time clocks are located to
10 clock in and out, resulting in approximately three to five minutes of off-the-clock work per day.

11 35. Defendants contend that they paid for all reported hours worked, that Class Members
12 were instructed to record all hours worked, and that they paid wages at the proper rates. Defendants
13 argue that given their written policies and practices, any unrecorded hours were likely subject to
14 individualized inquiry and unlikely to be certified.

15 36. Class Counsel's expert estimated Defendants' exposure on unpaid wages claims to be
16 approximately \$134,588.00 calculated as follows: (4,080 off the clock hours (assuming 3 minutes
17 per shift and 81,599 shifts) x \$32.99 average rate of pay (assuming 87.1% of off the clock hours
18 attributable to overtime). However, given Defendants' defenses and the potential hurdles facing
19 certification of off-the-clock claims, Class Counsel applied an 80%¹ discount making for an adjusted
20 realistic exposure of \$26,917.60 for Defendants.

21 Meal Periods and Rest Breaks:

22 37. Meal Breaks: Plaintiff argued that Defendants had a common practice and policy of
23 denying compliant meal periods. Specifically, Plaintiff alleges that Defendants frequently
24 interrupted Plaintiff's and Class Members' meal periods with work related tasks and questions that
25 they were told required immediate attention. As such, Plaintiff and Class Members were not
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28 ¹ Considering such discount for risk at certification and trial is reasonable because the Judicial Council of California found that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion. See Findings of the Study of California Class Action Litigation, 2000-2006, available at <https://courts.ca.gov/sites/default/files/courts/default/2024-12/class-action-lit-study.pdf>.

1 provided the opportunity to take full uninterrupted thirty (30) minute meal periods in accordance
2 with California law. For each meal period missed, of less than 30 minutes, or taken late for which
3 the employee was not provided a reasonable opportunity to take a complete and timely meal period,
4 an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7.
5 This additional hour of compensation is referred to as “premium pay.” To comply with these laws,
6 every employer must keep, for each employee, accurate time records showing when the employee
7 begins and ends each work period and takes his or her meal periods. See Wage Order 4-
8 2001(7)(A)(3). Plaintiff alleges that Defendants failed to pay the legally required premium at their
9 regular rate of pay whenever meal periods were missed, interrupted, or late.

10 38. Defendants disagreed with Plaintiff’s contentions regarding meal breaks. Defendants
11 argued that their written meal break policies were valid and disseminated to all employees.
12 Defendants contended that Class Members were given a reasonable opportunity to take their meal
13 periods, and in fact received timely, uninterrupted meal periods most of the time. Defendants also
14 contended that differences in how the various employees performed their daily duties would have
15 led to individualized issues predominating and precluded class certification.

16 39. Class Counsel’s expert estimated Defendants’ maximum total exposure on the meal break
17 claim at approximately \$714,593.00, calculated as follows: \$741,970.00 (31,598 unique meal break
18 violations x \$23.48 average hourly rate of pay) minus \$27,377.00 (total meal break premium
19 payments). However, Class Counsel believes this estimate is high given Defendants’ defenses and
20 the potential for individualized issues to become a significant obstacle to certification of this claim.
21 As such, Class Counsel provided an 80% discount making Defendants’ adjusted realistic exposure
22 \$142,918.60.

23 40. Rest Breaks: The same argument applied to rest breaks. Plaintiff contended that
24 Defendants did not provide Class Members with timely paid 10-minute rest breaks for every four
25 hours or major fraction thereof. Plaintiff contended that Class Members were interrupted during
26 their rest breaks with work related questions and were required to remain on Defendants’ premises
27 during their rest breaks.

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1 41. Defendants maintained that it provided a reasonable opportunity for Class Members to
2 take duty-free rest breaks. Defendants also pointed out that, unlike meal periods, rest breaks need
3 not be recorded, and as such, any violations would likely be difficult to prove at trial and potentially
4 depress the damages ultimately awarded. In light of these considerations, Class Counsel applied
5 significant and appropriate discounts to the rest break claim as well.

6 42. Class Counsel's expert estimated Defendants' maximum total exposure on the rest break
7 claim at approximately \$1,875,963.00 (80,750 rest break violations (assuming 100% violation rate
8 for shifts greater than 3.5 hours) x \$23.23 average hourly rate of pay). Given the challenges facing
9 certification of the rest break claim, Class Counsel discounted this amount by 80% to get an adjusted
10 realistic exposure of \$375,192.60.

11 Failure to Reimburse for Necessary Business Expenditures:

12 43. Under Labor Code § 22802(a) Defendants must indemnify Plaintiff and Class Members
13 for all necessary expenditures or losses incurred in direct consequence of the discharge of their
14 duties. As discussed above, Plaintiff alleges that Plaintiff and Class Members incurred necessary
15 expenditures in the performance of their job duties for Defendants, including the cost of personal
16 cell phone and internet usage for work related purposes, but were not reimbursed for those expenses
17 by Defendants. Defendants contend that they had an expense reimbursement policy and did
18 reimburse Plaintiff and Class Members for any business expenses incurred pursuant to their policy.

19 44. Class Counsel's expert estimated Defendants' maximum total exposure to unreimbursed
20 business expenses liability at approximately \$73,731.00 (assuming \$25 per month and offset by
21 \$54,669 in reimbursements paid). However, given Defendants' reimbursement policy and the
22 potential for the need for individualized inquiries making class certification of this claim difficult,
23 Class Counsel applied a discount of 80% to get an adjusted realistic exposure of \$14,746.20.

24 Inaccurate Wage Statement Violations:

25 45. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial
26 violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of
27 \$4,000 per employee. Plaintiff alleged Defendants issued wage statements to Plaintiff and Class

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Members that did not accurately list all hours worked by omitting off-the-clock work and inaccurately listing applicable hourly rates.

46. Defendants challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative claims. Defendants also argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.*, Labor Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure by an employer").

47. Class Counsel's expert estimated Defendants' maximum total exposure on the section 226 claim at approximately \$269,900.00 ((\$50 for initial violations x 118 employees from relevant period) + (\$100 for subsequent violations x 2,640 estimated number of pay periods after subtracting the initial violations during the relevant period)). After considering Defendants' contentions and the potential class certification issues, Class Counsel discounted this amount by 80% to get an adjusted realistic exposure of \$53,980.00.

Failure to Pay Final Wages at Termination or Separation:

48. In allegedly failing to pay Plaintiff and Class Members their minimum wages, overtime wages, premium pay for deficiently provided meal periods and rest breaks, and necessary expenditures, all discussed above, Plaintiff alleged that Defendants willfully failed to pay Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

49. Section 203 further provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages will continue as a penalty until paid for a period of up to 30 days from the date they were due. Because some Class Members stopped working for Defendants but were allegedly not paid their full compensation for the reasons discussed above, Class Members did not receive all wages due upon termination of employment.

50. Defendants challenged this claim under Labor Code § 203 with several arguments, including that this claim is merely derivative of the other claims that lacked merit and that under

1 Labor Code § 203, employers are only obligated to pay waiting-time penalties if they “willfully”
2 fail to pay wages due and owing at the time of termination or resignation. As Title 8, California
3 Code of Regulations, § 13520 states: “A willful failure to pay wages within the meaning of Labor
4 Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when
5 those wages are due. However, a good faith dispute that any wages are due will preclude imposition
6 of waiting time penalties under Section 203.” Defendants argued that their good faith disputes and
7 lack of willfulness would excuse its violations. Defendants maintained that because they had viable
8 defenses in both law and fact, such penalties were subject to a three-year limitations period under
9 Labor Code § 203(b).

10 51. Plaintiff’s expert estimated Defendants’ maximum total exposure on the section 203
11 claim at approximately \$1,183,258.00 (163 terminated employees during the relevant period x 30
12 days x \$24.95 average hourly regular rate of pay x 9.7 hours per day). Given the foregoing
13 arguments, Class Counsel discounted this amount by 80% to get an adjusted realistic exposure of
14 \$236,651.60.

15 PAGA Penalties:

16 52. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows
17 Plaintiff to obtain civil penalties on behalf of herself and other aggrieved employees for Defendants’
18 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
19 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
20 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved
21 employee per pay period for the initial violation. Pursuant to Labor Code § 2699(i), seventy-five
22 (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development
23 Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees.
24 The limitations period as for all penalties is one year prior to the filing of the complaint.

25 53. The provisions of the Labor Code potentially triggering PAGA penalties in this case
26 include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA
27 penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that “a court
28 may award a lesser amount than the maximum civil penalty amount specified by this part if, based

on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendants contested Plaintiff’s claim for PAGA penalties.

54. PAGA penalties are also derivative of each and every other claim, and Defendants argued the PAGA claims would be subject to the same defenses as the underlying claims, and as well as additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, Defendants asserted that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendants had never been notified of the alleged violations. *Id.* at 1208-1209.

55. Class Counsel estimated Defendants’ maximum total exposure on the PAGA claim at approximately \$275,800.00 (2,758 PAGA pay periods x \$100 penalty per pay period). However, Class Counsel also estimated any PAGA recovery would be substantially reduced, and applied discounts in light of the countervailing arguments with regard to the primary causes of action and the Court’s power to award “a lesser amount than the maximum civil liability.” The PAGA allocation agreed upon by the Parties therefore was \$50,000.00, subject to the Court’s final approval.

Unfair Business Practices

56. Plaintiff pled this cause of action to augment their other causes of action and aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiff’s wage claims, which qualify as unfair business practices, to four years rather than the three years provided by statute.

Summary

57. The foregoing discussion establishes the adequacy of the Settlement amount in light of the merits of Plaintiff’s case and establishes the fairness of the class action settlement in the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by explaining the legal basis for each of Plaintiff’s causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating to Defendants’ legal and factual arguments that worked to detract from the strength of Plaintiff’s case.

58. Class Counsel had to apply appropriate discounts in light of the facts and law as discussed above. This Settlement, like most others, was the product of compromise. As addressed above, Plaintiff estimated that Defendants faced a total realistic exposure of approximately \$1,126,206.60. The Gross Settlement Amount of **\$619,500.00** therefore represents a recovery for the Class Members of approximately 55% of the total realistic liability exposure Plaintiff estimated Defendants could face on these class-wide claims.

Class Counsel Fees Payment is Fair and Reasonable

59. Under the Settlement, Class Counsel requests, without opposition from Defendant, an award of \$206,500.00 for attorneys' fees and up to \$45,000.00 for reasonable expenses incurred to prosecute the Action. (Kim Decl., Ex. 1, ¶ 3.2.2). This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place as they will not receive any compensation for their efforts until recovery is obtained for the Class. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the Settlement if it is preliminarily approved. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive.

Class Representative Service Payment is Fair and Reasonable

60. Plaintiff is entitled to a reasonable service payment for her efforts and initiative in bringing and helping to prosecute this action. Plaintiff spent significant time better apprising herself of her rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only her own rights but also those of co-workers by filing a class action lawsuit.

61. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on to discuss every aspect of her case. Plaintiff provided Class Counsel with information about Defendants and about the industry generally, produced and reviewed documents, identified

1 witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation
2 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the
3 Settlement Agreement.

4 62. In light of the foregoing, Class Counsel believes that the Class Representative Service
5 Payment of \$5,000.00 is fair and reasonable.

6 **Proposed Class Notice Provides Adequate Notice**

7 63. The notification procedure set out in the Settlement Agreement provides the greatest
8 likelihood that each and every Class Member will receive the Class Notice, attached to the
9 Settlement as Exhibit A. Under the Settlement, the Settlement Administrator will mail the Class
10 Notice to the Class Members via first-class mail no later than 14 days following the receipt of class
11 data. (Ex. 1, ¶ 7.4.2.) If any Notices Packets are returned undeliverable, the Settlement Administrator
12 shall re-mail the Class notice using any forwarding address provided by the USPS. (*Id.*, Ex. 1,
13 ¶ 7.4.3) This is the best and most practicable way to ensure the greatest possible number of Class
14 Members will receive the Notice.

15 64. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
16 claims involved, the terms of the settlement, and their options thereunder. It provides for a specific
17 procedure to seek exclusion from the Class, disputing payments and Class data, and for lodging
18 objections to the settlement. In the Class Notice, Class Members will also receive Class Counsel's
19 contact information so they can speak to attorneys conversant with the legal and factual issues
20 involved in this case, as well as the contact information for the Settlement Administrator. The efforts
21 taken to ensure that Class Members receive the Class Notice and are well informed about the
22 settlement are reasonable and provide the best notice practicable under the facts.

23 **Qualifications and Adequacy of Class Counsel**

24 65. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases,
25 including class actions and PAGA actions on behalf of employees and others who have had their
26 rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs'
27 counsel of record in numerous wage and hour and employment class action and PAGA action cases
28 pending in both state and federal court.

1 66. D.Law is well-qualified and has ample experience, knowledge, and resources to act as
2 counsel and represent Plaintiff and the putative Class and aggrieved employees in this action. Our
3 practice is exclusively focused on employment matters and representing plaintiffs in wage and hour
4 actions with the same or similar causes of actions brought forth in the matter pending before this
5 Court.

6 67. D.Law has litigated and successfully resolved many wage and hour class action cases
7 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa
8 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.
9 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in
10 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in
11 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,
12 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-
13 L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,
14 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632
15 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
16 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
17 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
18 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of
19 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et
20 al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time
21 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.
22 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis
23 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v.
24 Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3
25 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk
26 Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont
27 Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT
28 Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa

1 MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court
2 of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California,
3 Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church &
4 Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL
5 Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo
6 Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account
7 Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369),
8 Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421),
9 Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v.
10 Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha
11 Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-
12 CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of
13 California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court
14 of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern
15 District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al.
16 (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc.
17 (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc.
18 (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat
19 International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care
20 Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v.
21 OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743),
22 Viridi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS
23 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-
24 CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San
25 Diego, 37-2020-00008179-CU-OE-NC), among others.

26 68. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement
27 department. I was admitted to the California Bar in December 2008. I received my J.D. from
28 Pepperdine University School of Law and B.S. from University of Southern California. Since

1 graduating from law school, I have dedicated virtually my entire career on the practice of
2 employment law. I have practiced employment law from the plaintiff's side, defense side, and from
3 an in-house position. I have significant experience specifically working on wage and hour class
4 actions from the plaintiff's side as well as the defense side, with the majority of my experience
5 coming from the plaintiff's side.

6 69. Attorney David Yeremian is Managing Attorney at D.Law and counsel of record for
7 Plaintiff. Mr. Yeremian graduated from UC Berkeley in 1997 and received his law degree and MBA
8 from UCLA in 2001. Mr. Yeremian has been honored as a Super Lawyers Rising Star in 2009, 2010,
9 2012-2015 and has been named and honored as a Super Lawyer. Since 2007, Mr. Yeremian has
10 focused exclusively on representing employees, including in wage-and-hour class actions. During
11 his career, Mr. Yeremian has represented employees in hundreds of wage-and-hour class action
12 lawsuits as lead or co-lead counsel (including in the Central, Southern, Eastern, and Northern
13 Districts of California), and has obtained six and seven-figure settlements against a range of
14 defendants, including Fortune 500 companies.

15 70. Attorney Roman Shkodnik received his Bachelor of Arts in history and political science
16 from the University of California, Los Angeles, in 2007. He then earned his Juris Doctorate from
17 Loyola Law School in May of 2011. Upon graduating from law school, he has exclusively focused
18 his practice on representing employees including in wage-and-hour class actions. During his career,
19 he has represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead
20 counsel (including in the Central, Southern, Eastern and Northern Districts of California), and he
21 has obtained six and seven figure settlements against a range of defendants, including Fortune 500
22 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
23 failure to pay minimum wages, unpaid wages and overtime, inaccurate pay statements, and failure
24 to pay timely wages - similar to claims at issue in the present matter.

25 71. The collective experience of the D.Law attorneys in litigating employment wage and hour
26 matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a
27 case, and generally negotiating fair and reasonable class and representative action settlements.
28 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the

1 constantly evolving substantive law (state and federal), as well as the procedural law of class and
2 representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the
3 skills and knowledge developed over decades of prosecuting and defending wage and hour class
4 actions to fairly and adequately represent the interests of the Class Members and aggrieved
5 employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law
6 are well-qualified to act as class counsel and represent Plaintiff and the putative Class Members and
7 aggrieved employees in this action.

8 72. We understand the responsibilities owed as counsel to the Settlement Class Members
9 and aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims
10 asserted in this action, and have remained committed to dedicating the resources necessary to
11 represent the Settlement Class and vigorously pursue their claims. Based upon my experience and
12 understanding of the claims and defenses in this action, I believe the settlement is fair, adequate,
13 and reasonable for the Class Members and aggrieved employees and all involved, and that the
14 Settlement is well within the range of reasonableness that would permit it to be finally approved. I
15 am not aware of any conflict of interest with Plaintiff or any other Class Member that would
16 interfere with our duties as Class Counsel.

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

19 Executed this 18th day of March, 2025, at Glendale, California.

20 
21 _____
22 Enoch J. Kim
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Melissa Josephine Fluty (“Plaintiff”) and defendants Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company (collectively “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants captioned *Melissa Josephine Fluty v. Zepexco, Inc. dba Zephyr Express, et al.* initiated on November 17, 2023 and pending in Superior Court of the State of California, County of Solano.
- 1.2 “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means a person employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the PAGA Period.
- 1.5 “Class” means all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the Class Period.
- 1.6 “Class Counsel” means D.Law, Inc.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources,

methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from November 17, 2019 through October 19, 2024.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Solano.
- 1.16 “Defendants” means named Defendants Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company.
- 1.17 “Defense Counsel” means Hirschfeld Kraemer LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$619,500.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from November 17, 2022 through October 19, 2024.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33 “PAGA Notice” means Plaintiff’s November 16, 2023 letter to Defendants and the providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$12,500.00) and the 75% to LWDA (\$37,500.00) in settlement of PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Melissa Josephine Fluty, the named plaintiff in the Action.

- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means: Defendants and each of its former and present parents, directors, officers, shareholders, owners, members, agents, employees, principals, representatives, accountants, auditors, consultants, stockholders, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. **RECITALS.**

- 2.1 On November 17, 2023, Plaintiff Fluty commenced a Class Action by filing a Complaint alleging causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code 510; (3) Meal Period Liability Under Labor Code 226.7; (4) Rest Break Liability Under Labor Code 226.7; (5) Reimbursement of Necessary Expenditures Under Labor Code 2802; (6) Violation of Labor Code 226; (7) Failure to Keep Required Payroll Records Under Labor Code 1174 and 1174.5; (8) Penalties Pursuant to Labor Code 203; and (9) Violation of Business & Professions Code 17200 *et seq.* On January 23, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under PAGA (“Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply

with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2 On November 16, 2023, pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.3 On August 20, 2024 the Parties participated in an all-day mediation presided over by Brandon McKelvey which led to this Agreement to settle the Action.

2.4 Prior to mediation, Plaintiff obtained, through informal discovery, a 30% sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

2.5 The Court has not granted class certification because the Parties engaged in mediation before any class certification.

2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$619,500.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment) the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service

Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. To receive the payment, Plaintiff will agree to a 1542 waiver and general release of all claims set forth below. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third, which is currently estimated to be \$206,500.00 and a Class Counsel Litigation Expenses Payment of not more than \$45,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$8,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$8,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion").vi The Non-Wage Portions are not subject to wage withholdings

and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000.00 to be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$12,500.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 303 Class Members who collectively worked a total of 23,699 workweeks from November 17, 2019 to August 20, 2024, and 125 Aggrieved Employees who worked a total 4,197 of PAGA Pay Periods from November 17, 2022 to August 20, 2024.

4.2 Class Data. Not later than 30 calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the

Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's

Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 **Plaintiff's Release.** Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, known and unknown, asserted and unasserted, that they have or may have had against the Released Parties, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (i) breach of contract, whether written, oral or implied; (ii) violation of public policy; (iii) tort claims, including but not limited to intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, misrepresentation, and fraud; (iv) retaliation claims, common-law claims; (v) any other claims for damages, costs, fees, or other expenses, including attorney's fees; and (vi) any violation of the following statutes, laws, and regulations: Title VII of the Civil Rights Act of 1964, as amended; Civil Rights Act of 1991; sections 1981 through 1988 of Title 42 of the United States Code, as amended; Americans with Disabilities Act of 1990, as amended; Age Discrimination in Employment Act of 1967, as amended; Older Workers Benefit Protection Act; Employment Retirement Income Security Act of 1974, as amended; Occupational Safety and Health Act, as amended; Sarbanes-Oxley Act of 2002; Family and Medical Leave Act of 1993, as amended; Fair Labor Standards Act; Fair Employment and Housing Act; Government Code section 12900 *et seq.*; California Family Rights Act; California Government Code section 12945.2 *et seq.*; Unruh Civil Rights Act; Civil Code section 51 *et seq.*; Whistleblower Protection Law; Labor Code section 1102.5(a) to (c); Labor Code section 6300 *et seq.*; and any applicable regulations thereunder; California Labor Code; Private Attorneys General Act of 2004 (Labor Code section 2698 *et seq.*); Labor Code section 132(a); and any other federal, state, or local civil employment law, statute, regulation, or ordinance capable of being released by the Plaintiff, excluding any claims that cannot be released as a matter of law, such as any pending workers' compensation claims. ("Plaintiff's Release.") Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the

provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were asserted, related, or could have been asserted based on the allegations in the Operative Complaint arising at any time during the Class Period, whether known or unknown,. This includes, but is not limited to, claims for: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to provide reimbursement; (v) failure to provide complete, accurate wage statements; (vi) failure to keep required payroll records; (vii) failure to pay wages timely at time of termination or resignation; (viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint, and (ix) all claims under the California Labor Code Private Attorneys General Act of 2004 or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaints, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2699 *et seq.*, and 2802 (collectively, the "Released Claims").

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action that occurred during the PAGA Period. This includes, but is not limited to, claims for: (i) failure to pay minimum wages; (ii) failure to pay wages and overtime in violation of Labor Code § 510; (iii) meal period liability under Labor Code §§ 226.7 and 512 and penalties; (iv) rest break liability under Labor Code § 226.7 and penalties; (v) failure to reimburse for necessary business expenditures in violation of Labor Code § 2802; (vi) failure to issue accurate and itemized wage statements in violation of Labor Code § 226; (vii) failure to issue semimonthly payments in violation of Labor Code § 204; (viii) failure to keep records in accordance with Labor Code § 1174; (ix) waiting time penalties pursuant to Labor Code § 203; (x) unfair competition under Business and Professions Code § 17200, *et seq.*; and (xi) PAGA claims under Labor Code § 2698 *et seq.*

6. **MOTION FOR PRELIMINARY APPROVAL.** After execution of the Settlement Agreement, Plaintiff will prepare and file a Motion for Preliminary Approval with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice. Plaintiff shall provide a draft of the Motion for Preliminary Approval to Defendants for their review at least ten (10) calendar days before the filing deadline.

6.1 **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2));

6.2 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. **SETTLEMENT ADMINISTRATION.**

7.1 **Selection of Administrator.** The Parties have jointly selected Apex Class Action LLC to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or

otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class

Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments

required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 303 Class Members and 23,699 total workweeks from November 17, 2019 to August 20, 2024 and (2) there were 125 Aggrieved Employees who worked 4,197 Pay Periods from November 17, 2022 to August 20, 2024. If the number of Total Workweeks encompassed within the Class period exceeds 23,699 by more than 10%, then at Defendants' option, either the: (a) Gross Settlement Amount shall be increased in proportion to the percentage increase in the number of Total Workweeks encompassed in the Class Period in excess of 10%; or (b) the Class Period shall end as of the date the workweeks within the Class Period reaches 26,069 workweeks.
9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than fifteen (15) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.
12. **ADDITIONAL PROVISIONS.**
- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final

Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things,

modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's

obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

To Defendants:

HIRSCHFELD KRAEMER LLP

HIEU T. WILLIAMS

ANNA T. PHAM

456 Montgomery Street, Suite 2200

San Francisco, California 94104

Telephone: (415) 835-9000

Facsimile: (415) 834-0443

Email: APham@hkemploymentlaw.com

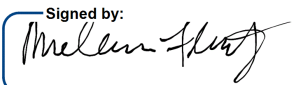
HWilliams@hkemploymentlaw.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 11/12/2024

Melissa Josephine Fluty

By:  Signed by:
DF64ECD88F744A7...

Dated: 11/12/2024

D. Law, Inc. [Approving as to Form Only]

By: 

Attorneys for Plaintiff Melissa Josephine Fluty

Dated: _____

Winebow, Inc.

By: _____

On behalf of Zepexco, Inc. dba Zephyr Express;
Winebow, Inc. dba Winebow; and Central Coast
Wine Company.

Dated: _____

**Hirschfeld Kraemer LLP [Approving as to Form
Only]**

By: _____

Hieu T. Williams, Esq.
Anna T. Pham, Esq.

*Attorneys for Defendants Zepexco, Inc. dba Zephyr
Express; Winebow, Inc. dba Winebow; and Central
Coast Wine Company.*

Dated: _____

Melissa Josephine Fluty

By: _____

Dated: _____

D. Law, Inc. [Approving as to Form Only]

By: _____

Attorneys for Plaintiff Melissa Josephine Fluty

Dated: 11/20/2024

Winebow, Inc.

By: 

On behalf of Zepexco, Inc. dba Zephyr Express;
Winebow, Inc. dba Winebow; and Central Coast
Wine Company.

Dated: 11/20/24

**Hirschfeld Kraemer LLP [Approving as to Form
Only]**

By: 

Hieu T. Williams, Esq.
Anna T. Pham, Esq.

*Attorneys for Defendants Zepexco, Inc. dba Zephyr
Express; Winebow, Inc. dba Winebow; and Central
Coast Wine Company.*

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

Melissa Fluty v. Zepexco, Inc. dba Zephyr Express et al

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company (collectively “Defendants”) for alleged wage and hour violations. The Action was filed by former Zepexco employee Melissa Fluty (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of hourly non-exempt employees who worked for Defendants in California during the Class Period (November 17, 2019 to October 19, 2024) (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for Defendants in California during the PAGA Period (November 17, 2022 to October 19, 2024.) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or

Written Objections Must be Submitted by _____	Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company employee. The Action accuses Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company of violating California labor laws by failing to pay overtime wages, minimum wages, failing to pay wages due upon termination and reimbursable expenses, and failing to provide meal periods and/or rest breaks, failing to keep required payroll records, and failing to keep accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA"). Plaintiffs are represented by attorneys in the Action: D.Law, Inc. ("Class Counsel.")

Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company or Plaintiff are correct on the merits.

In the meantime, Plaintiff and Defendants hired an experienced wage and hour mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs

and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company will pay \$ 619,500 as the Gross Settlement Amount (Gross Settlement). Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - a. Up to \$206,500.00 (one-third of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$45,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - b. Up to \$5,000 to Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - c. Up to \$8,500.00 to the Administrator for services administering the Settlement.

- d. Up to \$50,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth

a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company have agreed that, in either case, the Settlement will be void: Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company will not pay any money and Class Members will not release any claims against Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company.
8. Administrator. The Court has appointed a neutral company, _____ (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were asserted,

related, or could have been asserted based on the allegations in the Operative Complaint arising at any time during the Class Period, whether known or unknown. This includes, but is not limited to, claims for: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to reimburse necessary expenditures; (v) failure to provide complete, accurate wage statements; (vi) failure to keep required payroll records; (vii) failure to pay wages timely at time of termination or resignation; (viii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Operative Complaint, and (ix) all claims under the California Labor Code Private Attorneys General Act of 2004 or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaints, including but not limited to, Labor Code sections 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2699 *et seq.*, and 2802 (collectively, the "Released Claims").

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

11. All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notices, and ascertained in the course of the Action that occurred during the PAGA Period. This includes, but is not limited to, claims for: (i) failure to pay minimum wages; (ii) failure to pay wages and overtime in violation of Labor Code § 510; (iii) meal period liability under Labor Code §§ 226.7 and 512 and penalties; (iv) rest break liability under Labor Code § 226.7 and penalties; (v) failure to reimburse for necessary business expenditures in violation of Labor Code § 2802; (vi) failure to issue accurate and itemized wage statements in violation of Labor Code § 226; (vii) failure to issue semimonthly payments in violation of Labor Code § 204; (viii) failure to keep records in accordance with Labor Code § 1174; (ix) waiting time penalties pursuant to

Labor Code § 203; (x) unfair competition under Business and Professions Code § 17200, *et seq.*; and (xi) PAGA claims under Labor Code § 2698 *et seq.*

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company's calculation of Workweeks and/or Pay Periods based on Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Melissa Josephine Fluty v. Zepexco, Inc. dba Zephyr Express et al.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Melissa Josephine Fluty v. Zepexco, Inc. dba Zephyr Express et al.* and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready

to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department 12 of the Solano County Superior Court, located at 580 Texas St Fairfield, CA 94533. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via CourtCall (www.courtcall.com) Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Zepexco, Inc. dba Zephyr Express; Winebow, Inc. dba Winebow; and Central Coast Wine Company and Plaintiff has promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://portal.solano.courts.ca.gov/>) and entering the Case Number for the Action, Case No. CU2305443. You can also make an appointment to personally review court documents in the Clerk's Office by calling (707) 207-7330.

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

Class Counsel:

Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
D.Yeremian@d.law
Roman Shkodnik (SBN 285152)
R.Shkodnik@d.law
Amanda Fazio (SBN 346350)
a.fazio@d.law
450 N. Brand Blvd. Suite 840
Glendale, California 91203
Tel.: (818) 962-6465

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2