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GABRIELA CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

GABRIELA CHAVEZ, on behalf of herself
and other similarly-situated employees,

Plaintiff,

v.

SCHEID VINEYARDS INC., a Delaware
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Case No. 21CV002126

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Complaint Filed: July 2, 2021

1st Amended Complaint Filed: September 7, 2021

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between Plaintiff Gabriela Chavez (“Plaintiff” or “Class Representative”), individually and on
3 behalf of all putative Class Members and Aggrieved Employees, on the one hand, and Defendant
4 Scheid Vineyards, Inc. (“Defendant”), on the other hand. The Agreement refers to Plaintiff and
5 Defendant collectively as the “Parties,” or individually as “Party.”

6 **1. DEFINITIONS**

- 7 **1.1 “Action”** means the Plaintiff’s lawsuit originally filed against Defendant on July 2,
8 2021, entitled *Gabriela Chavez v. Scheid Vineyards, Inc.*, and amended on
9 September 7, 2021, pending in the Superior Court of the State of California,
10 County of Monterey, Case No. 21CV002126.
- 11 **1.2 “Aggrieved Employee(s)”** means any current or former, hourly, nonexempt
12 employee employed by Defendant in California at any time during the PAGA
13 Period.
- 14 **1.3 “Class Counsel”** means Isam C. Khoury of Cohelan Khoury & Singer, and Sahag
15 Majarian of the Law Offices of Sahag Majarian II.
- 16 **1.4 “Class Counsel Expense Payment”** means the amount allocated to Class Counsel
17 for reimbursement of expenses incurred to prosecute the Action, and subject to
18 court approval.
- 19 **1.5 “Class Counsel Attorney’s Fee Payment”** means the amount allocated to Class
20 Counsel for reimbursement of reasonable attorneys’ fees incurred to prosecute the
21 Action, and subject to court approval.
- 22 **1.6 “Class Data”** means Class Members’ and Aggrieved Employees’ identifying
23 information in Defendant’s possession, including each of their names, last-known
24 mailing address, last-known phone number, Social Security number, and number of
25 Class Period Workweeks and PAGA Period Pay Periods.
- 26 **1.7 “Class Member(s)”** means any current or former, hourly, nonexempt employee
27 employed by Defendant in California at any time during the Class Period, and
28 includes both Participating Class Members and Non-Participating Class Members.
- 1.8 “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.
- 1.9 “Class Period”** means the period from July 2, 2017 through December 31, 2022.
- 1.10 “Class Representative”** means the named Plaintiff in the Operative Complaint in
the Action seeking Court approval to serve as a Class Representative.
- 1.11 “Class Representative Service Payment”** means the payment to the Class
Representative for initiating the Action and providing services in support of the
Action.
- 1.12 “Court”** means the Superior Court of California, County of Monterey.

- 1.13 **“Defense Counsel”** means Gilbert Tsai and Josue Aparicio of Hanson Bridgett LLP.
- 1.14 **“Effective Date”** means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) 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 (iii) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.15 **“Final Approval”** means the Court’s order granting final approval of the Settlement.
- 1.16 **“Final Approval Hearing”** means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.17 **“Final Judgment” or “Judgment”** means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.18 **“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.
- 1.19 **“Individual PAGA Payment(s)”** means the Aggrieved Employee’s (including Non-Participating Class Members who are Aggrieved Employees) pro rata share of the PAGA Payout Fund (25% of the PAGA Payment) calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.20 **“LWDA”** means the California Labor and Workforce Development Agency.
- 1.21 **“LWDA PAGA Payment”** means Seventy-Five Percent (75%) of the PAGA Payment paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.22 **“Non-Participating Class Member”** means any Class Member who opts out of the Settlement by sending the Settlement Administrator a valid and timely Request for Exclusion.
- 1.23 **“PAGA”** means the Private Attorneys General Act, Labor Code §§ 2698, *et seq.*
- 1.24 **“PAGA Payment”** means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the LWDA.
- 1.25 **“PAGA Payout Fund”** means Twenty-Five Percent (25%) of the PAGA Payment from which Individual PAGA Payments to Aggrieved Employees will be made.
- 1.26 **“PAGA Period”** means the period from July 2, 2020 through December 31, 2022.
- 1.27 **“PAGA Notice”** means Plaintiff’s letter to the LWDA and Defendant providing notice pursuant to Labor Code section 2699.3, subd.(a), as set forth in Section 2.1 herein.

- 1.28 **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.29 **“Pay Period” or “PAGA Period Pay Period”** means any pay period during which an Aggrieved Employee worked for Defendant for at least one day, during the PAGA Period.
- 1.30 **“Preliminary Approval” or “Preliminary Approval Order”** means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.31 **“Released Parties”** means Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.32 **“Settlement”** means the disposition of the Action effected by this Agreement and the Judgment.
- 1.33 **“Settlement Administrator” or “Administrator”** means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.34 **“Settlement Administration Payment”** means the amount the Settlement 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.
- 1.35 **“Settlement Group Members”** means and includes Aggrieved Employees, Participating Class Members, and Non-Participating Class Members who qualify as Aggrieved Employees.
- 1.36 **“Workweek” or “Class Period Workweek”** means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS

- 2.1 On July 1, 2021, Plaintiff submitted a PAGA Notice to the LWDA in accordance with the requirements of Labor Code section 2699.3(a). Plaintiff’s PAGA Notice alleged that Defendant had violated California Labor Code sections 201-204, 218.5, 226, 226.2, 226.7, 510-512, 860, 1174, 1194, 1197, 1197.1, 1198, and all applicable Industrial Welfare Commission (“IWC”) Wage Orders.
- 2.2 On July 2, 2021, Plaintiff commenced this Action by filing a Complaint in the Superior Court of California, County of Monterey. The Complaint alleged putative class claims against Defendant on behalf of Plaintiff and all hourly, non-exempt employees employed by Defendant in the state of California from July 2, 2017 through the date of trial, for violations of Labor Code sections 201-204, 218.5, 226, 226.2, 226.7, 510-512, 860, 1174, 1194, 1194.2, 1197, 1197.1, 1198, all applicable IWC Wage Orders, and California Business and Professions Code §§ 17200, *et seq.*
- 2.3 On September 7, 2021, Plaintiff filed a First Amended Complaint, which added a cause of action under the PAGA on behalf of all hourly, non-exempt employees employed by Defendant in the state of California from July 2, 2020 through the date of trial. The First Amended Complaint is the operative Complaint in the Action (the “Operative Complaint.”)

- 1 **2.4** On July 14, 2022, the Parties participated in an all-day mediation presided over by
2 experienced mediator Gig Kyriacou. The Action did not settle at mediation.
- 3 **2.5** Prior to mediation, Defendant produced, and Plaintiff reviewed, a substantial
4 amount of data and documents relating to the size and scope of the putative Class
5 and Aggrieved Employees through an informal document production, which
6 permitted an analysis and evaluation of the statewide claims. Plaintiff's and Class
7 Counsel's investigation was sufficient to satisfy the criteria for court approval set
8 forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and
9 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130
 (*"Dunk/Kullar"*).
- 10 **2.6** The Parties continued to negotiate at arms-length through counsel and reached an
11 agreement in principle to settle this Action in August 2022, which was later
12 memorialized in a Memorandum of Understanding and fully executed by both sides
13 on August 17, 2022.

14 **3. ACKNOWLEDGEMENTS**

- 15 **3.1 Estimated Number of Putative Class Members.** Based on its records, Defendant
16 estimates that, as of the date of this Settlement Agreement, there are approximately
17 **434** putative Class Members.
- 18 **3.2 Estimated Number of Aggrieved Employees.** Based on its records, Defendant
19 estimates that, as of the date of this Settlement Agreement, there are approximately
20 **282** aggrieved employees.
- 21 **3.3 Conditional Certification for Settlement Purposes Only.** Solely for the purpose
22 of effectuating this Settlement, and subject to Court approval, the Parties hereby
23 stipulate to the conditional certification of the settlement class. The Parties agree
24 that certification for purposes of settlement is not an admission that class
25 certification is otherwise proper under Section 382 of the Code of Civil Procedure.
26 The Parties agree that if, for any reason, the Settlement is not preliminarily and
27 finally approved, the conditional certification of the settlement class will be of no
28 force or effect and shall become null and void; does not constitute an admission by
 Defendant that class certification is proper; shall be inadmissible for any purpose in
 any action; shall have no bearing on the issue of whether or not certification would
 be appropriate in a non-settlement context; will not be deemed admissible in this or
 any other proceeding; and the Parties shall revert to the respective positions they
 held prior to entering into this Agreement, including that the Parties will litigate the
 issue of class certification. Defendant expressly reserves its right and declares that
 it intends to oppose class certification vigorously should this Settlement not be
 granted final approval.
- 3.4 Fair, Adequate, and Reasonable Settlement.** The Parties and their respective
 counsel believe and warrant that this Agreement reflects a fair, reasonable, and
 adequate settlement of the Action, and have arrived at this Agreement through
 arms-length negotiations, taking into account all relevant factors, current and
 potential.
- 3.5 Benefits of Settlement to Settlement Group Members.** Plaintiff and Class
 Counsel recognize the expense and length of continued proceedings necessary to
 continue the litigation against Defendant through trial and through any possible
 appeals. Plaintiff and Class Counsel also have taken into account the uncertainty
 and risk of further litigation, the potential outcome, and the difficulties and delays

1 inherent in such litigation. Accordingly, based on their own thorough, independent
2 investigation and evaluation of this case, Plaintiff and Class Counsel strongly
3 believe the settlement set forth in this Agreement is a fair, adequate, and reasonable
4 settlement, and is in the best interest of the Settlement Group Members.

5 **3.6 Benefits of Settlement to Defendant.** While Defendant maintains that it complied
6 with applicable law at all times and that Plaintiff's claims are meritless, it
7 recognizes that the defense of the Action will be protracted and expensive.
8 Substantial amounts of time, energy, and resources of Defendant have been and,
9 unless this settlement is made, will continue to be devoted to the defense of the
10 claims asserted by Plaintiff. Defendant, therefore, enters into this Agreement and
11 conditional Settlement with no admission of liability whatsoever, and for the sole
12 purpose of compromising and settling the Action to avoid the cost, uncertainty and
13 operational burden of continuing litigation.

14 **3.7 No Admission of Liability.** This Agreement represents a compromise and
15 settlement of highly disputed claims. Nothing in this Agreement is intended or will
16 be construed as an admission by Defendant that the claim and allegations in the
17 Action have merit or that Defendant bears any liability to Plaintiff, the State of
18 California, or the Settlement Group Members on any alleged claims or any other
19 claims. Defendant vigorously denies the claims and each of the allegations asserted
20 in this Action. Defendant further specifically denies any non-compliance,
21 intentional or otherwise, with the statutory requirements of the California Labor
22 Code and/or the applicable IWC Wage Orders. Defendant also denies that Plaintiff
23 or any of the Settlement Group Members have suffered damages by virtue of
24 Defendant's conduct, or that Defendant's conduct warrants penalization.

25 **3.8 Reservation of Rights.** Defendant expressly reserves the right and declares that it
26 intends to oppose and defend against this Action vigorously should this Settlement
27 not be granted approval by the Court or be modified or reversed on appeal or
28 otherwise not become final. If for any reason this Agreement does not become
effective, Defendant reserve the right to defend against this Action on any basis.
Defendant does not concede the merits of Plaintiff's contentions, nor the existence
of any damages or penalties, but has agreed to resolve the litigation through this
Settlement in recognition of the expense and risk of continuing with the litigation
and in the belief that the settlement is fair, adequate and reasonable. Therefore, in
entering into this Agreement, it is the Parties' mutual intention and agreement that
if, for any reason, this Agreement does not become final, Defendant will retain all
rights to defend against this Action, and the fact of this Settlement may not be used
by Plaintiff in support of any argument against Defendant. Defendant will not be
deemed to have waived, limited, or affected in any way any of its claims, rights,
remedies, objections or defenses in the Action.

3.9 Non Evidentiary Use. This Agreement or its terms, or any statements or conduct
in the negotiation or drafting of it, shall not be admissible, offered or used as
evidence by Plaintiff, any Settlement Group Members, Defendant, or their
respective counsel in the Action or in any other proceeding as evidence of liability
or wrongdoing by Defendant and/or the Released Parties, or for any purpose
whatsoever. This Agreement may be used by Defendant and/or the Released Parties
to prove or defend against any claim released herein by Plaintiff or any Settlement
Group Member in any claim or threatened claim, including but not limited to any
judicial, quasi-judicial, administrative, or governmental proceeding. This
Agreement shall not be subject to collateral attack by any Settlement Group
Member. Such prohibited collateral attack shall include, but is not limited to claims

that any Settlement Group Members failed, for any reason, to timely receive or cash his or her Individual Class Payment and/or Individual PAGA Payment.

4. SETTLEMENT TERMS AND CONDITIONS

4.1 Gross Settlement Amount ("GSA"). Defendant agrees to pay a non-reversionary, maximum Gross Settlement Amount ("GSA") of no more than One Million Two Hundred and Fifty Thousand dollars (**\$1,250,000.00**), and to separately pay its share of employer-side payroll taxes owed on the wage portions of the Individual Class Payments. Defendant is under no obligation to pay the GSA (or any payroll taxes) prior to the deadline stated in Section 5.2.1 of this Agreement.

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

4.2.1 Settlement Administration Payment. A payment to the Settlement Administrator for costs and expenses incurred to administer this Settlement, not to exceed Ten Thousand dollars (**\$10,000.00**), except for a showing of good cause and as approved by the Court. To the extent Settlement Administration costs and expenses are less or the Court approves payment less than Ten Thousand dollars (**\$10,000.00**), the Settlement Administrator will allocate the remainder to the Net Settlement Amount ("NSA").

4.2.2 Class Representative Service Payment. A payment to the Class Representative not to exceed Seven Thousand Five Hundred dollars (**\$7,500.00**), and subject to Court approval. The Class Representative Service Payment is in addition to any individual payment the Class Representative is entitled to as a Settlement Group Member. If the Court approves a Class Representative Service Payment less than the amount requested, the Settlement Administrator will allocate the remainder to the NSA. The Settlement Administrator will report 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.

4.2.3 Class Counsel Fee Payment. A payment to Class Counsel not to exceed 33.3% of the GSA, which is currently estimated to be Four Hundred Sixteen Thousand Six Hundred Sixty-Six dollars and Sixty-Seven cents (**\$416,666.67**), and subject to Court approval. If the Court approves a Class Counsel Fee Payment less than the amount requested, the Settlement Administrator will allocate the remainder to the NSA. The Settlement Administrator will report the Class Counsel Fee Payment using IRS Form 1099. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fee Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of the Class Counsel Fee Payment.

4.2.4 Class Counsel Expense Payment. A payment to Class Counsel not to exceed Fifteen Thousand dollars (**\$15,000.00**) for litigation expenses, which is subject to court approval. If the Court approves a Class Counsel Expense Payment less than the amount requested, the Settlement Administrator will allocate the remainder to the NSA. The Settlement Administrator will report the Class Counsel Expense Payment using IRS Form 1099. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel

Expense Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of the Class Counsel Expense Payment.

4.2.5 PAGA Payment. One Hundred and Twenty-Five Thousand dollars (\$125,000.00) of the GSA shall be considered payment for alleged civil penalties under the PAGA ("PAGA Payment"). If the Court approves a PAGA Payment of less than the amount requested, the Settlement Administrator will allocate the remainder to the NSA. Subject to Court approval, the PAGA Payment will be allocated as follows:

- (a) **To the LWDA.** The Settlement Administrator shall pay to the LWDA Seventy-Five Percent (75%) of the PAGA Payment, which is currently estimated to be Ninety-Three Thousand Seven Hundred Fifty dollars (\$93,750.00).
- (b) **To Aggrieved Employees.** The Settlement Administrator shall allocate Twenty-Five Percent (25%) of the PAGA Payment to create the PAGA Payout Fund to be paid out to Aggrieved Employees, which is currently estimated to be Thirty-One Thousand Two Hundred Fifty dollars (\$31,250.00). Each Aggrieved Employee will receive a proportionate share of the PAGA Payout Fund that is equal to the number of PAGA Period Pay Periods he or she worked for Defendant based on the Class Data provided by Defendant.
- (c) **Calculation of Individual PAGA Payments.** The Settlement Administrator will calculate each Individual PAGA Payment by (i) dividing the amount of the PAGA Payout Fund (currently estimated to be \$31,250.00) by the total number of pay periods collectively worked by all Aggrieved Employees during the PAGA Period, and (ii) multiplying the result by the number of Pay Periods each Aggrieved Employee worked during the PAGA Period. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Individual PAGA Payment ties directly to the amount of PAGA Period pay periods that he or she worked.
- (d) **Tax Allocation of Individual PAGA Payments.** The Individual PAGA Payments will be apportioned as 100% civil penalties and shall be reported using IRS 1099 Forms. Payroll tax withholdings and deductions will not be withheld from these Individual PAGA Payments. Plaintiff and each Aggrieved Employee bear the full responsibility for payment of any taxes or withholdings that are found to be owed from the Individual PAGA Payments.

4.3 Net Settlement Amount ("NSA"). The Net Settlement Amount ("NSA") is to be paid to Participating Class Members as Individual Class Payments. The NSA includes the GSA Amount, less the following payments in the amounts approved by the Court: Settlement Administration Payment; Class Representative Service Payment; Class Counsel Fee Payment; Class Counsel Expense Payment; and PAGA Payout Fund.

4.3.1 Calculation of Individual Class Payments. An Individual Class Payment shall be made to each Participating Class Member. Individual Class Payments shall be calculated by (a) dividing the NSA by the total number of

Workweeks collectively worked by all Participating Class Members during the Class Period, and (b) multiplying the result by number of Workweeks worked by each individual Participating Class Member. One day worked in a given Workweek will be credited as a Workweek for purposes of this calculation. Therefore, the value of each Individual Class Payment ties directly to the amount of Class Period Workweeks that he or she worked.

4.3.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive an Individual Class Payment. The Settlement Administrator will allocate amounts equal to their Individual Class Payments in the NSA for distribution to Participating Class Members on a pro rata basis.

4.3.3 Tax Allocation of Individual Class Payments. Individual Class Payments to the Participating Class Members shall be apportioned as follows: 33.33% as payment for alleged unpaid wages, 33.33% as alleged unpaid interest, and 33.33% as alleged civil and statutory penalties. The Settlement Administrator will issue IRS W-2 Forms for alleged unpaid wages, and IRS 1099 Forms will be issued for alleged unpaid interest and alleged civil and statutory penalties. Plaintiff and each Participating Class Member bear the full responsibility for payment of any taxes or withholdings that are found to be owed from the Individual Class Payment.

5. SETTLEMENT FUNDING AND PAYMENTS

5.1 Wiring Instructions. As soon as practicable and no later than two (2) business days following the Effective Date, the Settlement Administrator shall provide to Defendant complete wiring instructions for the GSA, including, without limitation, the name of the account, name of the bank, routing number, and bank account number or such other pertinent information Defendant requires in order to effectuate payment in accordance with the terms of the Agreement.

5.2 Funding the GSA. Defendant shall fund the GSA by transmitting the sum into an escrow account to be established by the Settlement Administrator as approved by the Court, which funds shall be held in trust for the Settlement and created as a QSF as specified in Section 8.7.

5.2.1 Condition Precedent to Funding Settlement. Defendant shall transmit to the Settlement Administrator the GSA within twenty-one (21) calendar days of the Effective Date, provided that counsel for Defendant has received: (i) fully completed and signed IRS W-9 Forms from both Plaintiff Gabriela Chavez and Class Counsel; and (ii) complete wiring instructions from the Settlement Administrator as set forth in Section 5.1 herein.

5.2.2 No Further Obligations After Funding Settlement. Defendant shall be deemed to have fully met its payment obligations under this Agreement upon transfer and/or deposit of the GSA and shall assume no responsibility for the security or distribution of settlement funds following transfer and/or deposit of the GSA. Defendant shall have no further obligations under this Agreement after transferring the GSA to the Settlement Administrator. Nor will the payment of Individual Class Payments and Individual PAGA Payments obligate Defendant to confer any additional benefits or make any additional payments to Settlement Group Members (such as 401(k) contributions or bonuses).

1 **5.3 Payment to Settlement Group Members.** Within fourteen (14) calendar days
2 after Defendant funds the GSA, the Settlement Administrator will mail checks for
3 (i) all Individual Class Payments, and (ii) all Individual PAGA Payments. The
4 Settlement Administrator will send checks for Individual Class Payments to all
5 Participating Class Members (including those for whom Class Notice was returned
6 undelivered). The Settlement Administrator will send checks for Individual PAGA
7 Payments to all Aggrieved Employees including Non-Participating Class Members
8 who qualify as Aggrieved Employees (including those for whom Class Notice was
9 returned undelivered).

10 **5.3.1 First Class U.S. Mailing of Settlement Checks.** The Settlement
11 Administrator will issue checks for the Individual Class Payments and
12 Individual PAGA Payments and send them to the Settlement Group
13 Members via First Class U.S. Mail, postage prepaid.

14 **5.3.2 Address Search.** Before mailing any checks, the Settlement Administrator
15 must update the recipients' mailing addresses using the National Change of
16 Address Database. The Settlement Administrator must conduct an address
17 search for all other Settlement Group Members whose checks are returned
18 undelivered without USPS forwarding address. Within seven (7) calendar
19 days of receiving a returned check the Settlement Administrator must re-
20 mail checks to the USPS forwarding address provided or to an address
21 ascertained through the Address Search. The Settlement Administrator need
22 not take further steps to deliver checks to Settlement Group Members
23 whose re-mailed checks are returned as undelivered. The Settlement
24 Administrator shall promptly send a replacement check to any Settlement
25 Group Member whose original check was lost or misplaced, and which was
26 requested by the Settlement Group Member prior to the void date.

27 **5.3.3 Void Date.** The face of each check shall prominently state the date when
28 the check will be voided, which will be one-hundred and ninety (190)
29 calendar days after the date of mailing ("Void Date"). The Settlement
30 Administrator will cancel all checks not cashed by the void date.

31 **5.3.4 Cy Pres Recipient.** For any Settlement Group Member whose Individual
32 Class Payment check or Individual PAGA Payment check is uncashed and
33 cancelled after the void date, the Settlement Administrator shall transmit the
34 funds represented by such checks to a Court-approved nonprofit
35 organization or foundation consistent with Code of Civil Procedure Section
36 384, subd. (b) ("Cy Pres Recipient") Legal Aid at Work. The Parties, Class
37 Counsel and Defense Counsel represent that they have no interest or
38 relationship, financial or otherwise, with the intended Cy Pres Recipient.

39 **5.4 Payment to Settlement Administrator.** Within fourteen (14) calendar days after
40 Defendant funds the GSA, the Settlement Administrator will make the Settlement
41 Administration Payment.

42 **5.5 Payment to LWDA.** Within fourteen (14) calendar days after Defendant funds the
43 GSA, the Settlement Administrator will make the LWDA Payment.

44 **5.6 Payment to Plaintiff and Class Counsel.** Within twenty-one (21) calendar days
45 after Defendant funds the GSA, the Settlement Administrator will mail checks for
46 (i) Class Counsel Fee Payment, (ii) the Class Counsel Expense Payment and (iii)
47 the Class Representative Service Payment. Disbursement of the Class Counsel Fee
48 Payment, the Class Counsel Expense Payment and the Class Representative Service

1 Payment shall not precede disbursement of Individual Class Payments and
2 Individual PAGA Payments.

3 **6. RELEASES OF CLAIMS**

4 **6.1 Plaintiff's Release.** In exchange for the consideration provided by Defendant under
5 this Agreement, Plaintiff and her respective former and present spouses,
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns
7 generally, irrevocably and unconditionally releases, acquits, and forever discharges
8 the Released Parties from any and all claims, demands, rights, liabilities and causes
9 of action including, but not limited to: (a) all claims that were, or reasonably could
10 have been, alleged, based on the facts contained, in the Operative Complaint and
11 (b) all PAGA claims that were, or reasonably could have been, alleged based on
12 facts contained in the Operative Complaint or Plaintiff's PAGA Notice ("Plaintiff's
13 Release"). Plaintiff's Release does not extend to any claims or actions to enforce
14 this Agreement, or to any claims for vested benefits, unemployment benefits,
15 disability benefits, social security benefits, workers' compensation benefits that
16 arose at any time, or based on occurrences outside the Class Period. Plaintiff
17 acknowledges that Plaintiff may discover facts or law different from, or in addition
18 to, the facts or law that Plaintiff now knows or believes to be true but agrees,
19 nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
20 notwithstanding such different or additional facts or Plaintiff's discovery of them.

21 **6.2 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** Plaintiff
22 understands and expressly agrees that the general release set forth herein includes a
23 general release of all claims and a waiver of rights under Code of Civil Procedure
24 Section 1542, including but not limited to Plaintiff's Release, and a release of any
25 and all claims under the Age Discrimination in Employment Act, the Americans
26 with Disabilities Act, the Family Medical Leave Act, Title VII of the Civil Rights
27 Act, the California Fair Employment and Housing Act and the California Family
28 Rights Act. Plaintiff shall also waive the right to participate in, or to receive
recovery from, any other representative action, collective action, class action or
PAGA action brought by any other employee against Defendant. Plaintiff, on her
behalf and on behalf of her spouse, heirs, successors and assigns, understands and
expressly waives the benefits of California Civil Code § 1542 and agrees that this
Agreement extends to all of her claims against Defendant and the Released Parties,
regardless of nature or kind, whether known or unknown, suspected or
unsuspected, vested or contingent, whether in tort, contract, equity, or otherwise,
for violation of any federal, state or local statute, rule, ordinance or regulation,
arising from or attributable to any incident or event, occurring in whole or in part,
on or before the Parties' execution of this Settlement Agreement, including but not
limited to all claims arising out of, based upon, or relating to Plaintiff's
employment with Defendant or the remuneration for, or termination of, such
employment, and that any and all rights granted under any state or federal law or
regulation limiting the effect of this Agreement, including the provisions of Section
1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED.
Plaintiff's release includes a waiver of California Civil Code section 1542, which
provides as follows:

**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.**

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of Defendant and the Released Parties, Plaintiff expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims which she does not know or suspect to exist in her favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims. This release excludes any release of any claims not permitted to be released by law.

6.3 Participating Class Members' Release. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, irrevocably and unconditionally release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the allegations stated in the Operative Complaint and ascertained in the course of the Action.

6.4 Aggrieved Employees' Release. All Aggrieved Employees (including all Non-Participating Class Members who qualify as Aggrieved Employees), on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, irrevocably and unconditionally release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the allegations stated in the Operative Complaint, the PAGA Notice and/or ascertained in the course of the Action.

7. MOTION FOR PRELIMINARY APPROVAL

7.1 Class Counsel's Responsibilities. Within fourteen (14) calendar days of the full execution of this Agreement, Class Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including:

7.1.1 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);

7.1.2 A draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement;

7.1.3 A signed declaration from the Settlement Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and/or the proposed Cy Pres Recipient; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel;

7.1.4 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 and/or the proposed Cy Pres Recipient;

7.1.5 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; and all facts relevant to any

actual or potential conflict of interest with Class Members, the Settlement Administrator and/or the Cy Pres Recipient.

- 7.2 Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) court 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.
- 7.3 Submission to Settlement Administrator.** Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Settlement Administrator.
- 7.4 Submissions to LWDA:** Class Counsel shall submit a copy of this Agreement to the LWDA at the same time it is submitted to the Court in accordance with the requirements set forth in Section 2699(1)(2). Class Counsel shall also be responsible for submitting to the LWDA a copy of the Court's judgment and any other orders that award or deny civil penalties to the LWDA.
- 7.5 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.

8. SETTLEMENT ADMINISTRATION

- 8.1 Settlement Administrator.** The Parties agree to use CPT Group, Inc. to serve as the Settlement Administrator to administer the Settlement. All of the Settlement Administrator's costs and fees shall be paid from the Settlement Administration Payment, not to exceed \$10,000.00, and subject to Court approval. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Class Data:** No later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Settlement Administrator, in the form of a Microsoft Excel spreadsheet. 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.
- 8.2.1 Maintaining Employee Privacy.** To protect employee privacy rights, the Settlement 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 Settlement Administrator employees who need access to the Class Data to effect and perform under this Agreement.
- 8.3 Class Notice.** No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel and Defense Counsel that the data has

1 been received and state the number of Class Members, Aggrieved Employees,
2 Workweeks, and Pay Periods in the Class Data.

3 **8.3.1 Mailing Notices.** Using best efforts to perform as soon as possible, and in
4 no event later than fourteen (14) calendar days after receiving the Class
5 Data, the Settlement Administrator will mail the Class Notice to all Class
6 Members and Aggrieved Employees identified in the Class Data, via first-
7 class United States Postal Service ("USPS") mail, with Spanish translation,
8 substantially in the form attached to this Agreement as **Exhibit A**. Before
9 mailing Class Notices, the Settlement Administrator shall update Class
10 Member and Aggrieved Employee mailing addresses using the National
11 Change of Address database.

12 **8.3.2 Re-Mailing Undeliverable Notices.** Not later than three (3) business days
13 after the Settlement Administrator's receipt of any Class Notice returned by
14 the USPS as undelivered, the Settlement Administrator shall re-mail the
15 Class Notice using any forwarding address provided by the USPS. If the
16 USPS does not provide a forwarding address, the Settlement Administrator
17 shall conduct an address search, and re-mail the Class Notice to the most
18 current address obtained. The Settlement Administrator has no obligation to
19 make further attempts to locate or send Class Notices that are returned by
20 the USPS a second time.

21 **8.3.3 Extended Response Deadline for Re-Mailed Notices.** The deadlines for
22 Class Members' written objections, Challenges to Workweeks and/or Pay
23 Periods, and Requests for Exclusion will be extended an additional fourteen
24 (14) calendar days beyond the sixty (60) calendar days otherwise provided
25 in the Class Notice for all Class Members whose notice is re-mailed. The
26 Settlement Administrator will inform the Class Member of the extended
27 deadline with the re-mailed Class Notice.

28 **8.3.4 Later-Identified Class Members and/or Aggrieved Employees.** If the
Settlement Administrator, Defense Counsel 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 a Class
Member and/or Aggrieved Employee. If the Parties agree, such persons will
be entitled to the same rights as other Class Members and Aggrieved
Employees, and the Administrator will send, via email or overnight
delivery, a Class Notice requiring them to exercise options under this
Agreement not later than fourteen (14) days after receipt of Class Notice, or
the deadline dates in the Class Notice, whichever are later.

8.4 Requests for Exclusion (Opt-Outs). Class Members who wish to exclude
themselves (opt-out of) the Class Settlement must send the Settlement
Administrator, by fax, email, or mail, a signed written Request for Exclusion not
later than sixty (60) calendar days after the Settlement Administrator mails the
Class Notice (plus an additional 14 calendar 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.

1 **8.4.1 Participating Class Members.** Every Class Member who does not submit
2 a timely and valid Request for Exclusion is deemed to be a Participating
3 Class Member under this Agreement, entitled to all benefits and bound by
4 all terms and conditions of the Settlement, including the Participating Class
Members' Releases under Section 6.3 of this Agreement, regardless of
whether the Participating Class Member actually receives the Class Notice
or objects to the Settlement.

5 **8.4.2 Non-Participating Class Members.** Every Class Member who submits a
6 valid and timely Request for Exclusion is a Non-Participating Class
7 Member and shall not receive an Individual Class Payment or have the right
8 to object to the class action components of the Settlement.

9 **8.4.3 Non-Participating Class Members Who are Aggrieved Employees.**
10 Because future PAGA claims are subject to claim preclusion upon entry of
11 the Judgment, Non-Participating Class Members who are Aggrieved
12 Employees are deemed to release the claims identified in Section 6.4 of this
13 Agreement and are eligible for an Individual PAGA Payment.

14 **8.5 Challenges to Workweek or Pay Period Calculations.** Each Class Member or
15 Aggrieved Employee shall have sixty (60) calendar days after the Settlement
16 Administrator mails Class Notice (plus an additional 14 calendar days for Class
17 Members whose Class Notice is re-mailed) to challenge the number of Class Period
18 Workweeks and/or PAGA Periods Pay Periods (if any) allocated to them in the
19 Class Notice. The Class Member may challenge the allocation by communicating
20 with the Settlement Administrator via fax, email or mail. The Settlement
21 Administrator must encourage the challenging Class Member to submit supporting
22 documentation. In the absence of any contrary documentation, the Settlement
23 Administrator is authorized to presume that the Workweeks and Pay Periods
24 contained in the Class Notice are correct so long as they are consistent with the
25 Class Data. The Settlement Administrator's determination of each Class Member's
26 allocation of Workweeks and/or Pay Periods shall be final and not appealable or
27 otherwise susceptible to challenge. The Settlement Administrator shall promptly
28 provide copies of all challenges to calculation of Workweeks and/or Pay Periods to
Defense Counsel and Class Counsel and the Settlement Administrator's
determination of the challenges.

1 **8.6 Objections to Settlement.** Only Participating Class Members may object to the
2 class action components of the Settlement and/or this Agreement, including
3 contesting the fairness of the Settlement, and/or amounts requested for the Class
4 Counsel Fee Payment, Class Counsel Expense Payment and/or Class
5 Representative Service Payment.

6 **8.6.1 Rights of Participating Class Members.** Participating Class Members may
7 send written objections to the Administrator, by fax, email, or mail. In the
8 alternative, Participating Class Members may appear in Court (or hire an
9 attorney to appear in Court) to present verbal objections at the Final
10 Approval Hearing. A Participating Class Member who elects to send a
11 written objection to the Settlement Administrator must do so not later than
12 sixty (60) calendar days after the Settlement Administrator's mailing of the
13 Class Notice (plus an additional 14 days for Class Members whose Class
14 Notice was re-mailed).

1 **8.6.2 Rights of Non-Participating Class Members.** Non-Participating Class
2 Members have no right to object to any of the class action components of
 the Settlement.

3 **8.7 Qualified Settlement Fund (“QSF”).** The Settlement Administrator shall establish
4 a Qualified Settlement Fund (“QSF”) for the benefit of the Settlement Group
5 Members and from which all payments under this Agreement shall be paid. The
6 Settlement Administrator shall have its own Employer Identification Number under
7 IRS Form W-9 and shall use its own Employer Identification Number and shall
8 transmit the required employers’ and employees’ share of the withholdings, if any,
9 to the appropriate state and federal tax authorities. The Settlement Administrator
 shall establish a settlement fund that meets the requirements of a QSF under U.S.
 Treasury Regulation section 468B-1 and section 468B of the Internal Revenue
 Code of 1986, as amended (the “Code”). The QSF shall be an interest-bearing
 account at a federally insured bank that is mutually acceptable to the Parties and the
 Settlement Administrator.

10 **8.7.1 QSF Administration.** The Settlement Administrator shall: (1) open and
11 administer the QSF in such a manner as to qualify and maintain the
12 qualification of the QSF as a “Qualified Settlement Fund” under Section
13 468B of the Code and Treas. Reg. Section 1.468B-1; (2) satisfy all federal,
14 state, and local income and other tax reporting, return, and filing
15 requirements with respect to Defendant and the QSF and any interest or
16 other income earned by the QSF; and (3) satisfy out of the QSF all (i) taxes
 (including any estimated taxes, interest, or penalties) with respect to the
 interest or other income earned by the QSF, and (ii) fees, expenses, and
 costs incurred in connection with the opening and administration of the QSF
 and the performance of its duties and functions as described in this
 Agreement. The aforementioned taxes, fees, costs, and expenses shall be
 treated as, and included in, the costs of administering the QSF and as
 Settlement Administration Costs.

17 **8.7.2 Tax Reporting.** The Settlement Administrator shall provide copies to
18 Defendant of any federal, state, and local income or other tax reporting,
19 return, and filing prepared on Defendant’s behalf. The Parties agree to
20 cooperate with the Settlement Administrator and one another to the extent
21 reasonably necessary to carry out the provisions of this Section. The
22 Settlement Administrator shall be treated as an “administrator” as defined at
23 Treasury Regulation section 1.468B-2(k) for purposes of federal and state
24 income tax reporting with respect to the distributions and payments made
 under this Agreement. Accordingly, Forms 1099 will be distributed by the
 Settlement Administrator at times and in the manner required by the Code
 and consistent with this Agreement. If the Code, the regulations
 promulgated thereunder, or other applicable tax law, is changed after the
 date of this Agreement, the processes set forth in this section may be
 modified in a manner to comply with any such changes.

25 **8.8 Settlement Administrator Duties.** The Settlement Administrator has a duty to
26 perform or observe all tasks to be performed or observed by the Settlement
 Administrator contained in this Agreement or otherwise.

27 **8.8.1 Email Address and Toll-Free Number.** The Settlement Administrator will
28 establish, maintain and monitor an email address and a toll-free telephone
 number to receive calls and emails from Class Members and Aggrieved
 Employees.

1 **8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List.** The Settlement
2 Administrator will promptly review on a rolling basis Requests for
3 Exclusion to ascertain their validity. Not later than five (5) calendar days
4 after the expiration of the deadline for submitting Requests for Exclusion,
5 the Settlement Administrator shall email a list to Class Counsel and Defense
6 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; and (c)
copies of all Requests for Exclusion from Settlement submitted (whether
valid or invalid).

7 **8.8.3 Weekly Reports.** The Settlement Administrator must, on a weekly basis,
8 provide written reports to Class Counsel and Defense Counsel that, among
9 other things, tally the number of: Class Notices mailed or re-mailed, Class
10 Notices returned undelivered, Requests for Exclusion (whether valid or
11 invalid) received, objections received, challenges to Workweeks and/or Pay
12 Periods received and/or resolved, and checks mailed for Individual Class
Payments and Individual PAGA Payments ("Weekly Report"). The Weekly
Reports must include the Settlement Administrator's assessment of the
validity of Requests for Exclusion and attach copies of all Requests for
Exclusion and objections received.

13 **8.8.4 Settlement Administrator's Declaration.** Not later than fourteen (14)
14 calendar days before the date by which Plaintiff is required to file the
15 Motion for Final Approval of the Settlement, the Settlement Administrator
16 will provide to Class Counsel and Defense Counsel, a signed declaration
17 suitable for filing in Court attesting to its due diligence and compliance with
18 all of its obligations under this Agreement, including, but not limited to, its
19 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
Settlement 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.

20 **9. MOTION FOR FINAL APPROVAL**

21 **9.1 Final Approval Papers.** Not later than sixteen (16) court days before the
22 calendared Final Approval Hearing, Class Counsel will file in Court, a motion for
23 final approval of the Settlement that includes a request for approval of the PAGA
24 settlement under Labor Code section 2699, subd. (l), a proposed Final Approval
25 Order and a proposed Judgment (collectively "Motion for Final Approval"). Class
Counsel shall provide drafts of these documents to Defense Counsel not later than
seven (7) court 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.

26 **9.2 Response to Objections.** Each Party retains the right to respond to any objection
27 raised by a Participating Class Member, including the right to file responsive
28 documents in Court no later than five (5) court days prior to the Final Approval
Hearing, or as otherwise ordered or accepted by the Court.

9.3 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement, 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 Fee Payment, Class Counsel Expense Payment and/or Settlement Administrator Payment shall not constitute a material modification to the Agreement.

9.4 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.

9.5 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fee Payment and Class Counsel Expense Payment set forth in this Agreement, 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.

9.6 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, 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, as long as the Gross Settlement Amount remains unchanged.

10. ADDITIONAL PROVISIONS

10.1 Confidentiality. Plaintiff, Class Counsel, Defendant and Defense Counsel 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) to the extent necessary to report income to appropriate taxing authorities; (3) to comply with disclosure obligations under applicable securities laws; (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, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any

1 conversation or other communication, before the filing of the Motion for
2 Preliminary Approval, any with third party regarding this Agreement or the matters
3 giving rise to this Agreement except to respond only that “the matter was
4 resolved,” or words to that effect.

5 **10.2 No Public Statements.** The Parties agree and acknowledge that neither Plaintiff,
6 Defendant, nor their respective counsel will make any public statements (including
7 on counsel’s websites) or issue any press releases/comment to the press concerning
8 this Settlement.

9 **10.3 No Solicitation.** The Parties agree that they and their respective counsel and
10 employees will not solicit any Class Member to opt out of or object to the
11 Settlement, or appeal from the Judgment. Nothing in this paragraph shall be
12 construed to restrict Class Counsel’s ability to communicate with Class Members in
13 accordance with Class Counsel’s ethical obligations owed to Class Members.

14 **10.4 No Disparagement.** Plaintiff agrees not to make any disparaging comments about
15 Defendant or the Released Parties to any other person, firm or entity of any type or
16 to otherwise engage in any disparaging or defamatory conduct toward Defendant or
17 the Released Parties, and hereby acknowledges that Defendant will have available
18 all rights and remedies under the law, including but not limited to, actions for libel,
19 slander, and business slander.

20 **10.5 No Admission of Liability, Class Certification or Representative
Manageability for Other Purposes.** This Agreement represents a compromise and
21 settlement of highly disputed claims. Nothing in this Agreement is intended or
22 should be construed as an admission by Defendant that any of the allegations in the
23 Operative Complaint have merit or that Defendant has any liability for any claims
24 asserted; nor should it be intended or construed as an admission by Plaintiff that
25 Defendant’s defenses in the Action have merit. The Parties agree that class
26 certification and representative treatment is for purposes of this Settlement only. If,
27 for any reason, the Court does grant Preliminary Approval, Final Approval or enter
28 Judgment, Defendant reserves the right to contest certification of any class for any
reasons, and Defendant reserves 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 Defendant’s 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).

10.6 No Inducement. The Parties acknowledge that they are entering into this
Agreement as a free and voluntary act without duress or undue pressure or
influence of any kind or nature whatsoever, and that neither Plaintiff nor Defendant
have relied on any promises, representations, or warranties regarding the subject
matter hereof other than as set forth in this Agreement.

10.7 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 in this Settlement.

10.8 Attorneys’ Fees, Costs and Expenses. Except as otherwise specifically provided
for herein, each Party shall bear her or its own attorneys’ fees, costs and expenses.
In any suit or court action to enforce the terms of this Agreement, the prevailing
party shall be entitled to recover attorneys’ fees and costs.

1 **10.9 Attorney Authorization.** Class Counsel and Defense Counsel separately warrant
2 and represent that they are authorized by Plaintiff and Defendant, respectively, to
3 take all appropriate action required or permitted to be taken by such Parties
4 pursuant to this Agreement to effectuate its terms, and to execute any other
5 documents reasonably required to effectuate the terms of this Agreement including
6 any amendments to this Agreement.

7 **10.10 Defendant's Right to Withdraw.** Defendant has the right in its sole and exclusive
8 discretion to terminate and withdraw from the Settlement at any time prior to the
9 date the Court enters Final Approval of this Settlement if 10.00% or more of Class
10 Members timely and validly opt out of the Settlement or if the Court fails to
11 approve material terms of the settlement, including the scope of the release.
12 Defendant must make such election within fifteen (15) business days of being
13 notified by the Settlement Administrator of a 10.00% or greater opt-out rate or the
14 Court's denial of the settlement with prejudice.

15 **10.11 No Tax or Legal Advice.** Neither Plaintiff, Class Counsel, Defendant nor Defense
16 Counsel are providing any advice regarding taxes or taxability, nor shall anything
17 in this Settlement be relied upon as such within the meaning of United States
18 Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise. It is
19 understood and agreed that neither Party nor their respective counsel are making
20 representations regarding tax obligations or consequences, if any, related to this
21 Agreement, and that Settlement Group Members will assume any such tax
22 obligations or consequences that may arise from this Agreement, and that
23 Settlement Group Members shall not seek any indemnification from the Parties or
24 their counsel or any of the Released Parties in this regard. The Parties agree that, in
25 the event that any taxing body determines that additional taxes are due from any
26 Settlement Group Members, such Settlement Group Members assume all
27 responsibility for the payment of such taxes. Plaintiff and the Settlement Group
28 Members should consult with their tax advisors concerning the tax consequences of
29 their Individual Class Payment, Individual PAGA Payment and/or Class
30 Representative Payment they receive pursuant to this Agreement.

31 **10.12 Headings.** The descriptive heading of any section or paragraph of this Agreement
32 is inserted for convenience of reference only and does not constitute a part of this
33 Agreement.

34 **10.13 Modification of Agreement.** This Agreement, and all parts of it, may be amended,
35 modified, changed, or waived only by an express written instrument signed by all
36 Parties or their representatives, and approved by the Court.

37 **10.14 Agreement Binding on Successors.** This Agreement will be binding upon, and
38 inure to the benefit of, the successors of each of the Parties.

39 **10.15 Applicable Law.** All terms and conditions of this Agreement and its exhibits will
40 be governed by and interpreted according to the internal laws of the state of
41 California, without regard to conflict of law principles.

42 **10.16 Cooperation in Drafting.** The Parties have each cooperated in the drafting and
43 preparation of this Agreement. This Agreement will not be construed against any
44 Party on the basis that the Party was the drafter or participated in the drafting.

45 **10.17 Integrated Agreement.** Upon execution by all Parties and their counsel, this
46 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.

10.18 Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile, PDF, DocuSign (or similar e-signature) signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.19 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, pursuant to Code of Civil Procedure section 583.330, to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

11. EXECUTION BY PARTIES AND COUNSEL

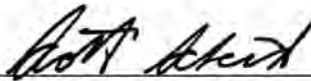
IN WITNESS WHEREOF, the Parties hereto execute this Agreement and have caused this Agreement to be executed by their duly authorized representatives. The date of the Agreement shall be the date of the latest signature.

AS TO CONTENT:

Dated: 10/07/2022, 2022

DocuSigned by:
Gabriela Chavez
FE79A3FAF3D44CA
Gabriela Chavez, Plaintiff

Dated: 10/3, 2022


Scott Scheid, President
On behalf of Scheid Vineyards, Inc.

AGREED AS TO FORM:

Dated: 10/10, 2022

DocuSigned by:
Sahag Majarian
E060D300863543A
Sahag Majarian
Law Offices of Sahag Majarian II
Attorneys for Plaintiff Gabriela Chavez

Dated: October 6, 2022


Isam C. Khoury
Cohelan Khoury & Singer
Attorneys for Plaintiff Gabriela Chavez

1 Dated: October 5, 2022



Gilbert J. Tsai
Josue R. Aparicio
Hanson Bridgett, LLP
Attorneys for Defendant Scheid Vineyards, Inc.

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