

1/3/2023

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F I L E D  
Superior Court of California  
County of Butte  
2/1/2023  
Shari Elmallah, Clerk  
By  Deputy  
Electronically FILED

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

ANTHONY PENCA, individually, and on  
behalf of other members of the general public  
similarly situated,

Plaintiff,

v.

SIERRA NEVADA BREWING CO., a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 21CV02883

Assigned for All Purposes to:  
Honorable Tamara L. Mosbarger  
Department 1

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF  
CLASS NOTICE, SETTING OF FINAL  
APPROVAL HEARING DATE**

Hearing Date: February 1, 2023  
Hearing Time: 9:00 a.m.  
Hearing Place: Department 1

Complaint Filed: November 24, 2021  
FAC Filed: December 5, 2022  
Trial Date: None Set

Electronically Filed

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

The Motion for Preliminary Approval of Class Action Settlement came before this Court, the Honorable Tamara L. Mosbarger presiding, on February 1, 2023 at 9:00 a.m. The Court, having considered the papers submitted in support of the Motion, ORDERS THE FOLLOWING:

1. The following Class is conditionally certified for purposes of settlement only: all current and former hourly-paid, non-exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) of Defendant Sierra Nevada Brewing Co. (“Defendant”) within the State of California at any time during the period from October 17, 2017, through January 31, 2023 (“Class” and Class Period”).

2. The Court grants preliminary approval of the settlement based upon the terms set forth in the Joint Stipulation and Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”). Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement. Capitalized terms shall have the definitions set forth in the Settlement Agreement.

3. The settlement embodied in the Settlement Agreement appears to be fair, adequate, and reasonable to the Class. The Settlement Agreement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the Final Approval Hearing.

4. Plaintiffs Anthony Penca and Christopher Davidson (“Plaintiffs”) are conditionally approved to serve as the class representatives.

5. Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation are conditionally approved as Class Counsel for the Class.

6. The Court confirms CPT Group, Inc. as the Settlement Administrator.

7. The proposed Gross Settlement Amount of \$3,050,000 is conditionally approved.

8. The proposed payment of the Attorney Fee Award to Class Counsel not to exceed \$1,159,000 (38% of the Gross Settlement Amount) and Cost Award to Class Counsel for actual litigation costs incurred not to exceed \$25,000 are conditionally approved.

9. The proposed Class Representative Enhancement Payments of \$10,000 to each Plaintiff for their services as the class representatives are conditionally approved.

1           10.     The proposed payment of the Administration Costs not to exceed \$20,000, to the  
2 Settlement Administrator for its services is conditionally approved.

3           11.     The Court also conditionally approves the Private Attorneys General Act of 2004  
4 (“PAGA”) Payment of \$100,000 the Parties have allocated for the settlement of the claims for PAGA  
5 penalties stemming from the alleged Labor Code violations. Seventy-five percent (75%) of the  
6 PAGA Payment (\$75,000) will be paid to the California Labor and Workforce Development  
7 Agency, and the remaining twenty-five percent (25%) of the PAGA Payment (\$25,000) shall be  
8 distributed to Eligible Aggrieved Employees, on a pro rata basis.

9           12.     A Final Approval Hearing on the question of whether the Settlement, Attorney Fee  
10 Award, Cost Award, and Class Representative Enhancement Payments should be finally approved  
11 as fair, reasonable, and adequate as to all Class Members who do not submit a valid and timely  
12 request to exclude themselves from the Settlement is scheduled on the date and time set forth below.

13           13.     The Court approves, as to form and content, the Notice of Class Action and PAGA  
14 Settlement (“Notice”), as attached as **Exhibit A** to the Agreement. The Court also approves the  
15 procedure for Class Members to participate in, to opt out of, and to object to the Settlement as set  
16 forth in the Notice. The Court approves, as to form and content, the Election Not to Participate In  
17 (“Opt Out” From) Class Action Settlement (“Exclusion Form”) the Class Members must use to  
18 exclude themselves from the Settlement, other than the release of claims under PAGA, as attached  
19 as **Exhibit B** to the Agreement.

20           14.     The Court directs the mailing of the Notice and Exclusion Form (collectively, known  
21 as the “Notice Packet”) to all identified Class Members via first-class regular U.S. Mail using the  
22 most current mailing address information available in accordance with the implementation schedule  
23 set forth below. The Court finds the dates selected for the mailing and distribution of the Notice  
24 Packet, as set forth in the Implementation Schedule below, meet the requirements of due process,  
25 provide the best notice practicable under the circumstances, and shall constitute due and sufficient  
26 notice to all persons entitled.

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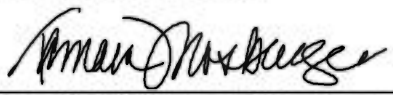
1           15. To facilitate administration of the Settlement pending final approval, the Court  
2 hereby enjoins Plaintiffs and all Class Members from filing or prosecuting any claims, suits, or  
3 administrative proceedings (including, but not limited to, filing claims with the Division of Labor  
4 Standards Enforcement of the California Department of Industrial Relations) based on claims  
5 released by the Settlement unless and until such Class Members have filed valid requests for  
6 exclusion with the Settlement Administrator and the time for filing valid requests for exclusion with  
7 the Settlement Administrator has not elapsed.

8           16. The Court orders the following Implementation Schedule for further proceedings:

9	a.	Deadline for Defendant to submit Class Data to Settlement Administrator	Within twenty-one (21) calendar days after entry of the Preliminary Approval Order
10			
11	b.	Deadline for Settlement Administrator to mail the Notice Packet to Class Members	Within fourteen (14) calendar days after the receipt of the Class Data from Defendant
12			
13	c.	Deadline for Class Members to postmark requests for exclusion, written objections, and written disputes to the Settlement Administrator	Within forty-five (45) calendar days from the initial mailing of the Notice Packet
14			
15	e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure section 1005
16			
17			
18	f.	Final Approval Hearing	<u>May 31, 2023</u> at <u>9:00</u> a.m./p.m. in Department 1
19			

20 Dated: 2/1/2023

21 IT IS SO ORDERED.

22 By:   
23 Honorable Tamara L. Mosbarger  
24 Judge of the Superior Court  
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# **EXHIBIT 1**



## JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Joint Stipulation and Settlement Agreement is between Plaintiffs Anthony Penca and Christopher Davidson (“Plaintiffs”) on behalf of themselves, others similarly situated, and other aggrieved employees and Defendant Sierra Nevada Brewing Co. (“Defendant”). Plaintiffs and Defendant are collectively referred to herein as the “Parties.”

### I. DEFINITIONS

In addition to the other terms defined in this Joint Stipulation and Settlement Agreement, the terms below have the following meaning:

- A. **Administration Costs:** All administrative costs incurred by the Settlement Administrator to administer this Settlement including the cost of notice to the Class Members, settlement administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement, which is currently estimated at Nineteen Thousand Dollars and Zero Cents (\$19,000.00) and shall not exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award:** The amount, not to exceed thirty-eight percent (38%) of the Gross Settlement Amount, including any interest, or One Million One Hundred Fifty-Nine Thousand Dollars and Zero Cents (\$1,159,000), finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Case or Action:** The class action lawsuit filed by Plaintiff Anthony Penca on November 24, 2021, and later amended in the Superior Court of California, County of Butte, Case No. 21CV02883, to include Plaintiff Christopher Davidson and a claim for PAGA.
- E. **Class:** All current and former hourly-paid, non-exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) of Defendant within the State of California at any time during the period from October 17, 2017, through January 31, 2023.
- F. **Class Counsel:** Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation.

- G. Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- H. Class Period:** The time period from October 17, 2017, through January 31, 2023.
- I. Class Representatives or Plaintiffs:** Anthony Penca and Christopher Davidson.
- J. Class Representative Enhancement Payments:** The amount the Court awards to Plaintiffs for their service as Class Representatives, which will not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) for each Plaintiff. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Class Representative Enhancement Payments are subject to the approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- K. Complaint:** The class action complaint filed by Plaintiff Anthony Penca on November 24, 2021, in the Superior Court of California, County of Butte, Case No. 21CV02883, the First Amended Complaint filed on December 5, 2022.
- L. Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- M. Counsel for Defendant:** Attorneys Yesinia Gallegos, Brian Casillas, and Ariel Beverly of McDermott Will & Emery LLP.
- N. Court:** The Superior Court of California, County of Butte.
- O. Defendant:** Sierra Nevada Brewing Co.
- P. Effective Final Settlement Date:** The later of the following: (i) if no objections to the Settlement have been filed, or timely objections have been filed and then withdrawn, then the date the Court enters judgment granting Final Approval; (ii) if an objection to the Settlement has been filed, then the date on which time expires to file an appeal of the Court's grant of Final Approval; or (iii) if an objection was filed and a Notice of Appeal of the Court's grant of Final Approval was timely filed, then the date the appeal is finally resolved, with the grant of Final Approval unaffected.



- Q. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA Payment that consist of all current and former hourly-paid, non-exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) of Defendant within the State of California at any time during the period from October 26, 2021, through January 31, 2023, (“PAGA Timeframe”).
- R. Exclusion Form:** The “Election Not to Participate In (“Opt Out” From) Class Action Settlement,” substantially like the form attached hereto as **Exhibit B**, subject to Court approval.
- S. Final Approval, Final Approval Order, Judgment or Final Judgment:** “Final Approval” or “Final Approval Order” means the final order entered by the Court following the Final Fairness and Approval Hearing. “Judgment” or “Final Judgment” means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- T. Gross Settlement Amount:** The total value of the Settlement is a non-reversionary Three Million Fifty Thousand Dollars and Zero Cents (\$3,050,000.00). Defendant will be entitled to a credit towards its satisfaction of the Gross Settlement Amount of Three Million Fifty Thousand Dollars and Zero Cents (\$3,050,000.00) in the amount of Three Hundred Thirty-Seven Thousand Five Hundred Eighty-Four Dollars and Zero Cents (\$337,584.00), which represents the amount previously paid to Class Members for *Pick Up Stix* settlements. The Gross Settlement Amount is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and the Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant’s portion of payroll taxes as the Class Members’ current or former employer is not included in the Gross Settlement Amount and will be a separate obligation of Defendant. In no event shall Defendant be liable for the payment of any amounts exceeding the Gross Settlement Amount with the exception of the employer’s share of payroll taxes due and payable as a result of the Settlement. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- U. Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to be mailed their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will



be mailed an Individual Settlement Share automatically, without the return of a claim form.

- V. **LWDA**: California Labor and Workforce Development Agency.
- W. **Net Settlement Amount**: The total amount of money available for payout to Participating Class Members, which is the Gross Settlement Amount less the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, Administration Costs, and the PAGA Payment. In other words, the Net Settlement Amount is the portion of the Gross Settlement Amount that will be distributed to Class Members who do not request exclusion from the Settlement.
- X. **Notice**: The “Notice of Class Action and PAGA Settlement” to be provided to all Class Members regarding the terms of this Settlement, substantially like the form attached hereto as **Exhibit A**, subject to Court approval. The Notice shall constitute class notice pursuant to California Rules of Court, rule 3.769 (f) and, once approved by the Court, shall be deemed compliant with California Rules of Court, rule 3.766.
- Y. **Notice Packet**: The Notice and Exclusion Form
- Z. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (California Labor Code section 2698, *et seq.*).
- AA. **PAGA Payment**: The PAGA Payment consists of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Action. Seventy-five percent (75%) of the PAGA Payment (\$75,000.00) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment (\$25,000.00) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below. Pursuant to California Labor Code § 2699(1)(2), settlement of a PAGA action must be approved by the Court and a copy of the proposed Settlement will be provided to the LWDA at the same time that it is submitted to the Court. In the event the LWDA objects to the Settlement, the Parties will meet and confer with the Court and the LWDA to reach a penalty allocation acceptable to all Parties that does not materially alter the terms of this Settlement.
- BB. **PAGA Released Claims**: Upon Defendant’s fulfillment of its payment obligations pursuant to Section III (J)(9)(a) of this Agreement, in exchange for the consideration provided by this Agreement, Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, the Eligible Aggrieved Employees, shall release the Released Parties from all claims made or which could have been made for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”),

Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiffs' letter to the LWDA dated October 26, 2022, and the Action, from October 26, 2021, through January 31, 2023 including the claims: (1) Failure to Pay Overtime Wages (Labor Code §§ 510 and 1198); (2) Failure to Provide Timely Off-Duty Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Labor Code §§ 1194 and 1197); (5) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201 and 202); (6) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (7) Failure to properly calculate and pay sick leave by using the regular rate of pay or otherwise (Labor Code section 246); (8) Failure to Reimburse for Reasonable Business Expenses (Labor Code §§ 2800 and 2802); (9) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*); and (10) Violation of Labor Code §§ 2698 *et seq.*

- CC. Participating Class Members:** All Class Members who do not submit valid and timely requests to exclude themselves from this Settlement.
- DD. Parties:** Plaintiffs Anthony Penca and Christopher Davidson, individually, as the Class Representatives, and on behalf of aggrieved employees pursuant to the PAGA, and Defendant Sierra Nevada Brewing Co.
- EE. Preliminary Approval or Preliminary Approval Order:** The order entered by the Court following the Preliminary Approval Hearing approving the proposed Settlement.
- FF. Qualified Settlement Fund:** A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.*, which is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiffs and Class Counsel.
- GG. Released Claims:** Upon Defendant's fulfillment of its payment obligations pursuant to Section III (J)(9)(a) of this Agreement, in exchange for the consideration provided by this Agreement, Plaintiffs and the Participating Class Members shall release the Released Parties from all claims made or which could have been made based on the facts pled in the Action, from October 17, 2017, through January 31, 2023 including the claims (1) Failure to Pay Overtime Wages (Labor Code §§ 510 and 1198); (2) Failure to Provide Timely Off-Duty Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Labor Code §§ 1194 and 1197); (5) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201 and 202); (6) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (7) Failure to properly calculate and pay sick leave by using the regular rate of pay or otherwise (Labor



Code section 246); (8) Failure to Reimburse for Reasonable Business Expenses (Labor Code §§ 2800 and 2802); (9) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*); and (10) Violation of Labor Code §§ 2698 *et seq.*

The Released Claims expressly exclude the PAGA Released Claims, and Participating Class Members will not release the PAGA Released Claims unless such Participating Class Members are also Eligible Aggrieved Employees. Participating Class Members who are also Eligible Aggrieved Employees shall release the PAGA Released Claims, in addition to releasing the Released Claims, upon Defendant's fulfillment of its payment obligations pursuant to Section III (J)(9)(a) of this Agreement.

**HH. Released Parties:** Defendant Sierra Nevada Brewing Co. and its affiliated companies (including People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates ("Allevity")) and their respective parent companies, subsidiaries, affiliates, shareholders, members, owners, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors and assigns.

**II. Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Notice Packet.

**JJ. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the addresses of all former employee Class Members. The Settlement Administrator will mail the Notice Packet by first-class U.S. mail to all current employee Class Members at the addresses Defendant has on file for those Class Members and to all former employee Class Members at the addresses obtained via skip trace. The Notice Packet will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt out of (exclude themselves from) the Settlement. Any Class Member who does not receive a Notice Packet after the Settlement Administrator has taken the steps outlined above will still be bound by the Settlement and/or Judgment.

**KK. Settlement Administrator:** The third-party administrator agreed upon by the Parties to administer this Settlement is CPT Group, Inc. ("CPT Group").

## **II. RECITALS**

**A. Procedural History.** On November 24, 2021, Plaintiff Anthony Penca filed a wage-and-hour class action lawsuit against Defendant in the Butte County Superior Court, Case No. 21CV02883, alleging the following causes of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period

premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of Business & Professions Code section 17200, *et seq.* (the “Class Action”). On October 26, 2022, Plaintiffs Anthony Penca and Christopher Davidson provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code they contend were violated and the theories supporting their contentions. On December 5, 2022, Plaintiffs filed a First Amended Complaint including a cause of action for representative PAGA claim.

- B. Investigation and Discovery.** Prior to mediation, the Parties conducted significant investigation and discovery of the relevant facts and law. Specifically, Defendant produced documents relating to its wage-and-hour policies, practices, and procedures, including those regarding meal and rest periods, overtime, and Defendant’s timekeeping, payroll, and operational policies. As part of Defendant’s production, Plaintiffs also reviewed time records, pay records, Class Members’ personnel files, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period and pay periods in the PAGA Timeframe. Plaintiffs also interviewed Class Members who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis.
- C. Mediation.** Plaintiffs and Class Counsel engaged in good faith, arm’s-length negotiations with Defendant and its counsel concerning possible settlement of the claims asserted in the Action. Specifically, on October 1, 2022, the Parties participated in a private mediation with mediator Lynn Frank, an experienced wage and hour class action mediator. This mediation occurred after the Parties exchanged extensive information and data, described in Section II(B) above. The Parties reached an agreement weeks after the mediation with the mediator’s assistance and memorialized it in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- D. Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have considered the uncertainty and risks, the potential outcome, and the difficulties and delays inherent in further litigation. Plaintiffs and Class Counsel conducted extensive settlement



negotiations, including a formal mediation session on October 1, 2022. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- E. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims and PAGA Released Claims.
- F. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the Action and denies that for any purpose other than settlement, the Action is appropriate for class or PAGA treatment. Defendant also asserts several defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement nor any document referred to or contemplated herein, nor any statements, discussions, or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can serve as adequate Class Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- G. Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, if this Settlement is finally approved by the Court, none of Plaintiffs, Participating Class Members, Eligible Aggrieved Employees, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiffs, Participating Class Members, and Eligible Aggrieved Employees have resolved and are forever barred from re-litigating the Released Claims and PAGA Released Claims, respectively.

### **III. SETTLEMENT TERMS AND CONDITIONS**

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendant is

obligated to pay under this Settlement Agreement is Three Million Fifty Thousand Dollars and Zero Cents (\$3,050,000.00). This Gross Settlement Amount includes a credit, in the amount of Three Hundred Thirty-Seven Thousand Five Hundred Eighty-Four Dollars and Zero Cents (\$337,584.00), which represents the amount previously paid to Class Members.

- B. Notice to the Labor and Workforce Development Agency (“LWDA”).** On October 26, 2022, Plaintiffs filed and served their Notice of Labor Code Violations Pursuant to Labor Code section 2699.3. Thus, Plaintiffs have satisfied their notice obligations under PAGA.
- C. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. This Stipulation is contingent upon Preliminary and Final Approval and certification of the Class for purposes of this Settlement only. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. Defendant expressly reserves the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be materially modified, reversed on appeal, or otherwise not become final.
- E. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as the representatives for the Class.
- F. Appointment of Class Counsel.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed to represent the Class.
- G. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

**1. Calculation.**

- a. Individual Settlement Share Calculation.** Ninety percent (90%) of the Net Settlement Amount shall be designated to pay the



directly-hired employees and ten percent (10%) of the Net Settlement Amount shall be designated to pay the worked hired through a staffing agency ("Temp" employees). The Settlement Administrator will pay each Participating Class Member according to his or her proportional share of the Net Settlement Amount, which will be equal to: (i) the number of workweeks the Participating Class Member (as a directly-hired employee, or Temp employee or combination) worked during the Class Period, based on the Class Data provided by Defendant, (ii) divided by the total number of workweeks worked by any and all Participating Class Members collectively during the Class Period, based on the same Class Data, (iii) which is then multiplied by the Net Settlement Amount. If a Participating Class Member executed a settlement agreement during the course of this case that represented a portion of the \$337,584.00 credit Defendant received towards the Gross Settlement Amount, that Participating Class Member will have his or her Individual Settlement Share reduced by the amount of that settlement. For example, if the Individual Settlement Share calculated for a particular Participating Class Member resulted in that Participating Class Member being owed \$1,300.00, but that Participating Class Member already received \$300.00 in settlement with Defendant, that Participating Class Member's Individual Settlement Share would be reduced by \$300.00, and the Participating Class Member would receive \$1,000.00, less applicable withholdings where appropriate. One day worked in a given week will be credited as one workweek for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the number of workweeks the Participating Class Member worked during the Class Period.

- 2. Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) wages, and eighty percent (80%) interest and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 Forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 Forms. The employees' share of payroll tax withholdings shall be withheld from each person's Individual Settlement Share. Each Eligible Aggrieved Employee's portion of the PAGA Payment will be allocated as one hundred percent (100%) penalties, and the Eligible Aggrieved Employee will be issued an IRS Form 1099 if the Eligible Aggrieved Employee's payment exceeds \$600.00.

**H. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

- 1. To the Plaintiffs, Anthony Penca and Christopher Davidson.** In addition to their respective Individual Settlement Share and portion of the PAGA Payment, and subject to the Court's approval, Plaintiffs will receive up to \$10,000.00, each, as Class Representative Enhancement Payments. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Enhancement Payments. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payments, the Settlement Administrator shall pay whatever amounts the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiffs, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members.
- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-eight percent (38%), or \$1,159,000, of the Gross Settlement Amount and a Cost Award not to exceed \$25,000.00. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize U.S. treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. Except as provided herein, each side shall bear its own attorneys' fees and costs.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share.



The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portions of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and will forward that amount along with each Participating Class Member's Individual Settlement Share withholdings to the appropriate taxing authorities.

4. **To the Settlement Administrator.** The Settlement Administrator – CPT Group – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court in an amount currently estimated at \$19,000.00 and not to exceed \$20,000.00. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. In the event the Court does not approve the entirety of the application for the Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendant nor the Plaintiffs shall be responsible for paying the difference between the amount requested and the amount awarded.
  5. **To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
  6. **To Eligible Aggrieved Employees.** The Settlement Administrator will pay each Eligible Aggrieved Employee according to his or her proportional share of the PAGA Payment, which will be equal to: (i) the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe, based on the Class Data provided by Defendant, (ii) divided by the total number of pay periods worked by any and all Eligible Aggrieved Employees collectively during the PAGA Timeframe, based on the same Class Data, (iii) which is then multiplied by the \$25,000.00 of the PAGA Payment allocated to the Eligible Aggrieved Employees. 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 Eligible Aggrieved Employee's portion of the PAGA Payment ties directly to the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe.
  7. **To the LWDA.** Seventy-five percent (75%) of the PAGA Payment (\$75,000.00) shall be paid to the LWDA.
- I. **Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that CPT Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be

responsible for: (a) preparing, printing, and mailing the Notice Packet to the Class Members; (b) creating a static settlement website that will go live on the same date the Notice Packet is first mailed to the Class Members and that will include, among other things, the Complaint, standalone generic copies of the Notice and Exclusion Form, all papers filed in connection with the preliminary approval motion (including all orders filed by the Court), all papers filed in connection with the Final Approval Hearing (including the fee motion and the final approval motion), and, if the Settlement is approved, the Final Judgment; (c) keeping track of any objections or requests for exclusion from Class Members; (d) performing skip traces and re-mailing Notice Packets, Individual Settlement Shares, and portions of the PAGA Payment to Class Members; (e) calculating any and all payroll tax deductions as required by law; (f) calculating and mailing each Participating Class Member's Individual Settlement Share and each Eligible Aggrieved Employee's portion of the PAGA Payment; (g) providing weekly status reports to Counsel for Defendant and Class Counsel, which are to include updates on any objections or requests for exclusion that have been received; (h) mailing the LWDA's portion of the PAGA Payment to the LWDA; (i) distributing the Attorney Fee Award and the Cost Award to Class Counsel; (j) printing and providing Class Members and Plaintiffs with W-2 and 1099 Forms as required under this Agreement and applicable law; (k) providing a due diligence declaration for submission to the Court upon completion of the Settlement and prior to the Final Approval Hearing; (l) turning over any funds remaining in the Qualified Settlement Fund at the close of the 180-day period as a result of uncashed checks to the *cy pres* recipient Community Legal Information Center in Chico, California; and (m) deleting the settlement website on the 181st day after the first settlement check is mailed, and (n) performing other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in CPT Group or otherwise have a relationship with CPT Group that could create a conflict of interest.

## **J. Procedure for Approving Settlement.**

### **1. Motion for Preliminary Approval and Conditional Certification.**

- a.** Plaintiffs will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Notice and Exclusion Form.
- b.** At the Preliminary Approval Hearing, Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval Hearing.



- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The amounts of the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments.

**2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

- a. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the following information about each Class Member: (1) first and last name; (2) last known mailing address; (3) Social Security number; (4) hire and termination dates; and (5) the total number of weeks during the Class Period during which the Class Member performed any actual work for Defendant as an hourly-paid, non-exempt California employee ("collectively "Class Data"). If any or all this information is unavailable to Defendant, Defendant will so inform Class Counsel, and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the addresses of all former employee Class Members of Defendant. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential. This provision will not impede Class Counsel's ability to discharge their fiduciary duties, including effectuating the terms of this settlement.
- b. The Settlement Administrator shall run all addresses contained in the Class Data through the United States Postal Service National

Change of Address (“NCOA”) Database (which provides updated addresses for individuals who have moved in the previous four years and who have provided the U.S. Postal Service with a forwarding address) to obtain current address information. The Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available within fourteen (14) calendar days after the receipt of the Class Data from Defendant.

- c. If a Notice Packet is returned because of an incorrect address, within ten (10) calendar days after receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Notice Packet to the Class Member. The Settlement Administrator will use the NCOA Database and skip tracing to attempt to find the Class Member’s current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing Notice Packets to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be re-mailed to the original address. If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip trace or forwarded mail, will have their Response Deadline to postmark a request for exclusion from or objection to the Settlement extended by ten (10) calendar days from the original Response Deadline. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed packet.
- d. Class Members may dispute the information provided in their Notice Packets. All such disputes must be in writing, postmarked by the Response Deadline, and sent via first-class regular U.S. mail to the Settlement Administrator. To the extent a Class Member disputes the number of workweeks or pay periods with which he or she has been credited or the amount of his or her Individual Settlement Share or portion of the PAGA Payment, the Class Member must produce and submit evidence to the Settlement Administrator showing that such information is inaccurate. Class Members shall be permitted to submit copies of any evidence supporting workweek or pay period disputes – original versions will not be required. Absent evidence rebutting



Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence rebutting Defendant's records, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or portion of the PAGA Payment to which the Class Member may be entitled. If the Parties cannot agree on a final decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or portion of the PAGA Payment to which the Class Member may be entitled, the decision will be turned over to the Court. In this situation, the Court will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible workweeks or pay periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or portion of the PAGA Payment to which the Class Member may be entitled.

- e. If the Settlement Administrator receives an incomplete or deficient request for exclusion, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and shall provide the Class Member fourteen (14) calendar days with which to cure the deficiency. However, the provision of a cure period will not extend the Response Deadline. If the Settlement Administrator does not receive a cured request for exclusion, postmarked on or before the last day of the cure period, the Class Member will be determined not to have excluded himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendant of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of requests for exclusion received.
- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. If any material changes occur after the date of

the filing of the Settlement Administrator's declaration of due diligence but before the Final Approval Hearing, the Settlement Administrator will supplement its declaration.

- 3. Objections to Settlement.** The Notice Packet will provide that Class Members who wish to object to the Settlement must mail a written objection to the Settlement Administrator, postmarked no later than the Response Deadline. Class Members who object to this Settlement or any of its terms may not also submit requests for exclusion from this Settlement (i.e., may not opt out of this Settlement). In the event a Class Member submits both a request for exclusion and a written objection, the request for exclusion will be deemed invalid, and the objection will remain valid. The date the objection is postmarked shall be the exclusive means for determining whether an objection was timely served.

**a. Format.** Objections should: (a) state the objecting Class Member's full name, address, and telephone number, as well as the name and address of counsel, if any; (b) describe, in clear and concise terms, the Class Member's reasons for objecting and the legal and factual arguments supporting the objection; (c) identify any evidence supporting the factual basis for the objection; (d) be signed by the objecting Class Member, his or her lawful representative, or his or her attorney, if any; and (e) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing. An objection will be deemed valid if it is postmarked no later than the Response Deadline and provides sufficient information to allow the Settlement Administrator to identify the Class Member and understand that the Class Member objects to the Settlement or some term(s) of the Settlement. Objecting Class Members who choose to submit evidence supporting their objections may submit copies of such evidence – original versions will not be required.

**b. Appearance at Final Approval and Oral Objection.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through their own counsel, at the Class Member's own expense and orally object to the Settlement. Any attorney who will represent a Class Member objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Counsel for Defendant no later than fifteen (15) calendar days before the Final Approval Hearing. Plaintiffs, rather than objecting Class Members and/or their counsel, if any, will be responsible for filing timely objections with the Court.



- c. A Class Member who objects to the Settlement will remain a member of the Settlement, i.e., a Participating Class Member, and if the Court finally approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as those Participating Class Members who do not object.
  - d. Plaintiffs and Defendant will be permitted to respond in writing to such objections no later than seven (7) calendar days before the Final Approval Hearing. Plaintiffs waive any right to object to the Settlement and hereby endorses the Settlement as fair, reasonable, adequate and in the best interests of the Class Members.
- 4. **Request for Exclusion from the Settlement (“Opt Out”).** The Notice Packet will provide that Class Members who wish to exclude themselves from the Settlement must mail a request for exclusion to the Settlement Administrator. The request for exclusion should: (a) include the Class Member’s name and address, and the last four digits of the Class Member’s Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline. A request for exclusion will be deemed valid if it is postmarked no later than the Response Deadline and provides sufficient information to allow the Settlement Administrator to identify the Class Member and understand the Class Member’s request.
  - a. **Confirmation of Authenticity.** The date of the initial mailing of the Notice Packet and the date the signed request for exclusion is postmarked shall be conclusively determined according to the records of the Settlement Administrator. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely and valid executed request for exclusion will not participate in or be bound by the Settlement and Judgment, will not receive an Individual Settlement Share, and will not have any right to object, appeal, or comment thereon. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will be mailed an Individual Settlement Share, and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
  - b. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties

with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed to Class Members, the number of re-mailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

- c. **Defendant's Option to Terminate.** If over five percent (5%) of the Class Members timely opt out of the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement Agreement no later than five (5) court days prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no Party may use the fact that the Parties agreed to the Settlement Agreement for any reason. Defendant will be responsible for paying any Administration Costs incurred if Defendant exercises its right to withdraw from the Settlement Agreement under this provision.
- d. **Eligible Aggrieved Employees May Not Opt Out of PAGA Settlement.** Notwithstanding the foregoing, the Parties agree that there is no statutory or other right for any Eligible Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement, which releases the claims enumerated in Section I (BB) above ("PAGA Released Claims"). An Eligible Aggrieved Employee who submits a timely and valid request for exclusion shall be deemed to have excluded himself or herself from the class portion of the Settlement only and will still be mailed a check for his or her portion of the PAGA Payment and shall release the PAGA Released Claims.

**5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage, directly or indirectly, any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Final Approval Order or Judgment.

**6. Motion for Final Approval.**

- a. Upon expiration of the Response Deadline, Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) the Administration Costs; (4) the



Class Representative Enhancement Payments; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment).

- b. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement Payments, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
  - c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law. Notice of entry of Final Judgment will be served upon Class Members by the Settlement Administrator posting the Final Judgment on the settlement website.
- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
- 8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any

alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Shares or Eligible Aggrieved Employees' portions of the PAGA Payment.

9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Counsel for Defendant and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendant and Class Counsel.
- a. **Funding the Settlement:** Within then (10) calendar days of the Effective Final Settlement Date, Defendant shall provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.
  - b. Within thirty (30) calendar days of the Effective Final Settlement Date, Defendant shall deposit the Two Million Seven Hundred Twelve Thousand Four Hundred and Sixteen Dollars and Zero Cents (\$2,712,416.00) needed to fund the Gross Settlement Amount and any employer's share of payroll taxes into the QSF (as defined below).
  - c. **Disbursement:** Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment (\$75,000.00) to the LWDA for settlement of the PAGA claim.
  - d. **Qualified Settlement Fund:** The Parties and Settlement Administrator shall treat the Qualified Settlement Fund as coming into existence on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.



**10. Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and pay the amount of the Individual Settlement Share(s) and/or portion(s) of the PAGA Payment to the *cy pres* recipient Community Legal Information Center in Chico, California.

**11. Final Report by Settlement Administrator.** Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

**12. Defendant's Legal Fees.** Defendant is responsible for paying for all Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

**K. Release of Claims.** Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, Plaintiffs and the Participating Class Members will fully and finally release and discharge the Released Parties from the Released Claims.

**L. Effect of PAGA Settlement.** Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, the Eligible Aggrieved Employees, will fully and finally release and discharge the Released Parties from the PAGA Released Claims. As explained in Section III (J)(4)(d) of this Agreement, Eligible Aggrieved Employees may not opt out of the PAGA portion of the Settlement and will still be mailed checks for their portions of the PAGA Payment and shall still release the PAGA Released Claims regardless of the submission of a valid and timely request for exclusion.

**M. Plaintiffs' Release of Claims and General Release.** Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, in exchange for the Class Representative Enhancement Payments in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to each Class Representative and in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs in the event this matter had not successfully resolved, Plaintiffs hereby provide a general release of claims for

themselves and any respective spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, equity, or otherwise, arising out of Plaintiffs' respective employment with Defendant, payment of wages during that employment and the cessation of that employment and/or violation of any federal, state or local statute, rule, ordinance or regulation. With respect to the General Release, Plaintiffs stipulate and agree that, upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of this Agreement, Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

#### **N. Miscellaneous Terms.**

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Case, or that but for the Settlement, a Class should be certified in the Case. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended as or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Case will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant's policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as



salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plans, policies or bonus programs. Defendant retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.

3. **Publicity.** Plaintiffs and Class Counsel agree that they have not and will not publish the Settlement Agreement. In response to any inquiries, Plaintiffs will state that "the case was resolved, and it was resolved confidentially." Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding Plaintiffs' or the Class Member's claims or the Settlement Agreement on its website, and shall not contact any reporters or media regarding the Settlement Agreement. Despite this provision, Class Counsel can discuss the Settlement Agreement with Plaintiffs and the Class Members and in any filings with the Court. This provision shall not impede Class Counsel's ability to discharge their fiduciary duties, including effectuating the terms of the Settlement.
4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.
5. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Counsel for Defendant warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may

become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. 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 arm's-length negotiations, taking into account all relevant factors, current and potential.
- 13. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations



regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.

- 14. Jurisdiction of the Court.** Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 15. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 16. 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.
- 17. 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 or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 18. Escalation Clause.** The Gross Settlement Amount is based on Defendant's representations that there are approximately 132,879 workweeks at issue through January 31, 2023: 121,827 workweeks for Defendant's direct employees, and 11,052 workweeks for the Defendant's temps during the class period defined above. If total workweeks increases by more than 10%, the Settlement Fund shall be increased by \$22.95 for any workweek added above the 10% cushion.

#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 12/13/2022, 2022

**PLAINTIFF ANTHONY PENCA**



\_\_\_\_\_  
Anthony Penca

Dated: \_\_\_\_\_, 2022

**PLAINTIFF CHRISTOPHER DAVIDSON**

\_\_\_\_\_  
Christopher Davidson

Dated: \_\_\_\_\_, 2022

**DEFENDANT SIERRA NEVADA BREWING CO.**

\_\_\_\_\_  
Paul Janicki, Chief Financial Officer on behalf of  
Sierra Nevada Brewing Co.

Dated: \_\_\_\_\_, 2022

**JUSTICE LAW CORPORATION**

\_\_\_\_\_  
Douglas Han, Esq.  
Shunt Tatavos-Gharajeh, Esq.  
Phillip Song, Esq.  
*Attorneys for* Plaintiffs Anthony Penca and  
Christopher Davidson, on behalf of themselves and  
all others similarly situated

///



#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: \_\_\_\_\_, 2022

**PLAINTIFF ANTHONY PENCA**

\_\_\_\_\_  
Anthony Penca

Dated: 12/10/2022, 2022

**PLAINTIFF CHRISTOPHER DAVIDSON**

*Christopher Michael Davidson*  
\_\_\_\_\_

Christopher Davidson

Dated: \_\_\_\_\_, 2022

**DEFENDANT SIERRA NEVADA BREWING CO.**

\_\_\_\_\_  
Paul Janicki, Chief Financial Officer on behalf of  
Sierra Nevada Brewing Co.

Dated: December 13, 2022

**JUSTICE LAW CORPORATION**

*D. Han*  
\_\_\_\_\_

Douglas Han, Esq.

Shunt Tatavos-Gharajeh, Esq.

Phillip Song, Esq.

*Attorneys for Plaintiffs Anthony Penca and  
Christopher Davidson, on behalf of themselves and  
all others similarly situated*

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#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: \_\_\_\_\_, 2022

**PLAINTIFF ANTHONY PENCA**

\_\_\_\_\_  
Anthony Penca


Dated: \_\_\_\_\_, 2022

**PLAINTIFF CHRISTOPHER DAVIDSON**

\_\_\_\_\_  
Christopher Davidson

Dated: DEC 27, 2022

**DEFENDANT SIERRA NEVADA BREWING  
CO.**

  
\_\_\_\_\_  
Paul Janicki, Chief Financial Officer on behalf of  
Sierra Nevada Brewing Co.

Dated: \_\_\_\_\_, 2022

**JUSTICE LAW CORPORATION**

\_\_\_\_\_  
Douglas Han, Esq.  
Shunt Tatavos-Gharajeh, Esq.  
Phillip Song, Esq.  
*Attorneys for* Plaintiffs Anthony Penca and  
Christopher Davidson, on behalf of themselves and  
all others similarly situated

///



Dated: \_\_\_\_\_, 2022

**MCDERMOTT WILL & EMERY LLP**



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Yesenia Gallegos, Esq.

Brian Casillas, Esq.

Ariel Beverly, Esq.

*Attorney for Defendant Sierra Nevada Brewing Co.*

# **EXHIBIT A**



## **NOTICE OF CLASS ACTION AND PAGA SETTLEMENT**

*A court authorized this notice. This is not a solicitation.*

*This is not a lawsuit against you, and you are not being sued.*

*However, your legal rights are affected by whether you act or don't act.*

**TO: Any and all persons who have been employed by Defendant Sierra Nevada Brewing Co. ("Defendant") as hourly-paid, non-exempt employee (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) within the State of California at any time during the period from October 17, 2017, through January 31, 2023.**

The Superior Court of California, County of Butte has granted preliminary approval of a proposed settlement ("Settlement") of the above-captioned action (the "Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action and PAGA Settlement ("Notice") carefully. The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

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## 1. *What Is This Case About?*

On October 26, 2022, Plaintiffs Anthony Penca and Christopher Davidson (collectively, “Plaintiffs”), former employees of Sierra Nevada Brewing Co. (“Defendant”), gave notice to the California Labor and Workforce Development Agency (“LWDA”) that they believed Defendant was violating the California Labor Code with respect to all of Defendant’s hourly employees in California (employed directly or through a staffing agency). Specifically, Plaintiffs alleged that Defendant was violating Labor Code provisions related to properly paying employees for all hours worked; properly paying minimum and overtime wages; properly compensating employees for missed, interrupted, short, and late meal and rest breaks; paying employees all earned and unpaid wages in a timely manner upon employees’ discharge or termination; paying employees all wages due to them in a timely manner; providing employees with complete and accurate wage statements; keeping complete and accurate payroll records showing the hours worked daily by and the wages paid to employees; and reimbursing employees for all necessary business-related costs and expenses. The relevant Labor Code sections are sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

On November 24, 2021, Plaintiff Anthony Penca, a former employee of Sierra Nevada Brewing Co. (“Defendant”) initiated a class action lawsuit against Defendant in the Superior Court of California, County of Butte (the “Class Action”). A class action is a procedure by which an employee may resolve the claims of other absent employees on a representative basis. Plaintiff’s lawsuit alleged the following causes of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of Business & Professions Code section 17200, *et seq.*

On December 5, 2022, Plaintiffs filed a First Amended Complaint including the PAGA cause of action in the lawsuit and adding Christopher Davidson as a named Plaintiff. A PAGA claim is a type of representative claim authorized by the Labor Code Private Attorneys General Act of 2004 (PAGA), which allows aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for violations of the California Labor Code. An aggrieved employee is any person who was employed by the alleged Labor Code violator and against whom one or more of the alleged Labor Code violations was committed. An employee who files a PAGA lawsuit is acting as an agent of California’s labor law enforcement agencies, who have the power to initiate an enforcement action directly. Penalties awarded in a PAGA action are measured by the number of Labor Code violations committed by the employer, and a portion of these penalties must be paid to the State of California. Plaintiffs’ PAGA lawsuit sought civil penalties based on the same Labor Code violations for which Plaintiffs asserted class claims in the Class Action and which Plaintiffs described in their letter to the LWDA, explained in the first paragraph above.

Class actions and PAGA claims are different in that an employee filing a class action is resolving the claims of absent employees while an employee filing a PAGA claim is acting as an agent of the State of California to obtain penalties for absent employees for Labor Code violations committed against those employees, as explained in the paragraph above. In addition, members of a class action have the right to opt out of, or exclude themselves from, the class action, but aggrieved employees do not have the right to opt out of a PAGA claim. Class members who opt out will not be bound by the terms of any judgment issued by the Court in the class action. Class members who do not opt out will be bound by the terms of any judgment issued and will be precluded from bringing any claims that were or that could have been brought against the employer in the lawsuit in which the individual was

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Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]



a class member. Unlike class members, aggrieved employees retain the right to pursue or recover other remedies available under state or federal law.

On February 7, 2022, Defendant filed an Answer to the Class Action. Defendant denies each and every allegation and claim asserted against it and asserted more than two dozen affirmative defenses. Defendant alleged and continues to allege that it has no liability to any of the Plaintiffs or Class Members. Defendant contends that Plaintiffs and the Class Members were properly compensated for all hours worked and were paid all wages owed under applicable law; that Plaintiffs and the Class Members were provided with meal and rest periods in compliance with California law or otherwise provided with meal or rest premium payments; that Plaintiffs and Class Members received itemized wage statements satisfying statutory requirements; Defendant reimbursed Plaintiffs and Class Members for all necessary business related expenses; that Plaintiffs and Class Members were timely paid all wages due, including at the time of separation, and that Defendant otherwise complied with all applicable laws and regulations. Defendant, therefore, alleged and continues to allege that it is not liable for any of the damages or penalties claimed or that could be claimed in the Class Action. Defendant further argued that Plaintiffs would be unable to secure a court order certifying this matter as a class action.

Notwithstanding, in lieu of the costs and uncertainly related to protracted litigation and its impact on Defendant's operations and existing employees, Defendant agreed to attempt to resolve the matter.

Plaintiffs and Defendant (collectively, the "Parties") attended a mediation with mediator Lynn Frank on October 1, 2022, to attempt to resolve the claims Plaintiffs made against Defendant in the Class Action without forcing Plaintiff to file a motion seeking to certify the case as a class action and without going to trial. The Parties were unable to agree to a settlement of the claims alleged in the Class Action at mediation but weeks later, with the mediator's assistance, the Parties agreed to the proposed Settlement – some of the terms of which are described in this Notice – which resolves the claims alleged in the Class Action and the PAGA claim.

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties avoid the risks and cost of a trial.

## **2. *Why Have I Received This Notice?***

Defendant's personnel records indicate that you may be a Class Member. You are a Class Member if you are currently or were formerly employed by Defendant as an hourly-paid, non-exempt employee (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) within the State of California at any time during the period from October 17, 2017, through January 31, 2023 ("Class Period"). In addition, you are an Eligible Aggrieved Employee if you are currently or were formerly employed by Defendant as an hourly-paid, non-exempt employee (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) within the State of California at any time during the period from October 26, 2021, through January 31, 2023 ("PAGA Timeframe").

A Preliminary Approval Hearing regarding the proposed Settlement – the terms of which the Parties agreed to pursuant to the mediation on October 1, 2022 – was held on February 1, 2023, in the Superior Court of California, County of Butte. At the Preliminary Approval Hearing, the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The purpose of this Notice is to inform you of the proposed Settlement and advise you of your rights with respect to the proposed Settlement.

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Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on [date of final approval hearing], at [time a.m./p.m.], before the Honorable Tamara L. Mosbarger at the Superior Court of California, County of Butte, located at 1775 Concord Avenue, Chico, California 95928, Department 1 (North Butte County Courthouse).

### **3. What Are My Options?**

As a Class Member and/or Eligible Aggrieved Employee, you have options with respect to your involvement in the proposed Settlement. Each option has its consequences, which you should understand before making your decision. The table below summarizes your rights with respect to each option and the steps you must take to select each option. These options are also explained in more detail later in this Notice.

**Important Note:** *Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.*

<b>OPTIONS</b>	<b>CLASS MEMBERS</b>	<b>ELIGIBLE AGGRIEVED EMPLOYEES</b>
<b>DO NOTHING</b>	If you do nothing and the Court grants final approval of the Settlement, you will become part of the Action, and the Settlement Administrator will mail you a check for your Individual Settlement Share, which will be based on the total number of workweeks you worked for Defendant as a California-based hourly-paid non-exempt employee (whether hired directly or through staffing agency People 2.0 Global LLC dba Alleivity Recruiting & Staffing fka Anderson and Associates) within the State of California during the Class Period, at your address of record. You will give up your right to pursue the Released Claims as defined in Section No. 9 below, meaning you will be unable to sue the Released Parties, including Defendant, for the Released Claims.	If you do nothing and the Court grants final approval of the Settlement, you will become part of the Action, and the Settlement Administrator will mail you a check for your portion of the PAGA Payment, which will be based on the total number of pay periods you worked for Defendant as an hourly-paid non-exempt employee (whether hired directly or through staffing agency People 2.0 Global LLC dba Alleivity Recruiting & Staffing fka Anderson and Associates) within the State of California during the PAGA Timeframe, at your address of record. You will give up your right to pursue the PAGA Released Claims as defined in Section No. 9 below, meaning you will be unable to sue the Released Parties, including Defendant, for the PAGA Released Claims.



<b>UPDATE MAILING ADDRESS</b>	You must keep the Settlement Administrator informed of any change of address. The purpose of doing so is to ensure the Settlement Administrator can contact you for, among other things, the proper mailing of your Individual Settlement Share check. You can contact the Settlement Administrator by calling the Settlement Administrator at [phone number].	You must keep the Settlement Administrator informed of any change of address. The purpose of doing so is to ensure the Settlement Administrator can contact you for, among other things, the proper mailing of a check for your portion of the PAGA Payment. You can contact the Settlement Administrator by calling the Settlement Administrator at [phone number].
<b>DISPUTE WORKWEEKS AND/OR PAY PERIODS</b>	If you believe the number of workweeks with which you have been credited, and thereby the amount of your Individual Settlement Share, as provided in this Notice, is inaccurate, you may dispute this information. The procedure for disputing this information is described in Section No. 6 below.	If you believe the number of pay periods with which you have been credited, and thereby the amount of your portion of the PAGA Payment, as provided in this Notice, is inaccurate, you may dispute this information. The procedure for disputing this information is described in Section No. 6 below.
<b>OBJECT</b>	You may object to the class portion of the proposed Settlement. If you would like to object, you may not opt out of the class portion of this Settlement. The procedure for objecting to the proposed Settlement is described in Section No. 7 below. If you object and the Court approves the proposed Settlement, the Settlement Administrator will mail you your Individual Settlement Share check, and you will give up your right to sue the Released Parties, including Defendant, for the Released Claims as defined in Section No. 9 below.	You do not have the right to object to the PAGA portion of the proposed Settlement. If the Court approves the proposed Settlement, the Settlement Administrator will mail you a check for your portion of the PAGA Payment, and you will give up your right to sue the Released Parties, including Defendant, for the PAGA Released Claims as defined in Section No. 9 below.

<b>REQUEST EXCLUSION</b>	<p>If you do not want to participate in the class portion of the proposed Settlement, you may request exclusion from, or opt out of, the class portion of the proposed Settlement. If the Court grants final approval of the Settlement, the Settlement Administrator will not mail you an Individual Settlement Share, and you will not give up the right to sue the Released Parties, including Defendant, for any of the Released Claims as defined in Section No. 9 below. The procedure for requesting exclusion from the class portion of the proposed Settlement is described in Section No. 7 below.</p>	<p>You do not have the right to request exclusion from, or opt out of, the PAGA portion of the proposed Settlement. If the Court grants final approval of the Settlement, the Settlement Administrator will mail you a check for your portion of the PAGA Payment, and you will give up the right to sue the Released Parties, including Defendant, for the PAGA Released Claims as defined in Section No. 9 below. Eligible Aggrieved Employees who opt out of the class portion of the proposed Settlement will still be mailed checks for their portions of the PAGA Payment and will give up the right to sue the Released Parties for the PAGA Released Claims.</p>
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#### **4. *Who Are the Attorneys Representing the Parties?***

<b>Attorneys for Plaintiffs and the Class</b>	<b>Attorneys for Defendant</b>
<p><b>JUSTICE LAW CORPORATION</b>  Douglas Han  Shunt Tatavos-Gharajeh  Phillip Song  751 N. Fair Oaks Avenue, Suite 101  Pasadena, California 91103  Telephone: (818) 230-7502  Facsimile: (818) 230-7259</p>	<p><b>MCDERMOTT WILL &amp; EMERY LLP</b>  Yesenia Gallegos  Brian Casillas  Ariel Beverly  2049 Century Park East, Suite 3200  Los Angeles, California 90067  Telephone: (310) 227-4110  Facsimile: (310) 227-4730</p>

The Court has decided that Justice Law Corporation is qualified to represent Plaintiffs, on an individual basis, and you and all other Class Members, on a class-wide basis, simultaneously. Class Counsel is working on behalf of Plaintiffs and the Class at large. If you want your own attorney, you may hire one at your own cost.

#### **5. *How Does This Settlement Work?***

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated employees who were employed by Defendant as an hourly-paid non-exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) within the State of California at any time during the Class Period. Plaintiffs and these other current and former employees comprise a “Class” and are “Class Members.” Those Class Members employed by Defendant as hourly-paid non-exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) within the State of California at any time during the PAGA Timeframe are also “Eligible Aggrieved Employees.” The proposed Settlement of this Action is a class and

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Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]



representative action settlement, meaning the Settlement resolves the Released Claims of all Class Members, except for those Class Members who exclude themselves from the Class by requesting to be excluded in the manner set forth in Section No. 8 below, as well as the PAGA Released Claims of all Eligible Aggrieved Employees. The Released Claims and the PAGA Released Claims are defined in Section No. 9 below. In return for giving up the right to sue the Released Parties for the Released Claims, the Class Members who do not decide to exclude themselves from the class portion of the proposed Settlement will be mailed checks for their Individual Settlement Shares. Similarly, in return for giving up the right to sue the Released Parties for the PAGA Released Claims, the Eligible Aggrieved Employees will be mailed checks for their portions of the PAGA Payment.

Because the proposed Settlement is a class and representative action settlement, it differs from a class-only settlement in several ways. Unlike a class-only settlement, the proposed Settlement includes Eligible Aggrieved Employees, a PAGA Payment, and PAGA Released Claims.

Under the terms of the proposed Settlement, the total maximum amount that Defendant will be required to pay is three million fifty thousand dollars (\$3,050,000) (“Gross Settlement Amount”). Defendant has already paid three hundred thirty-seven thousand five hundred eighty-four dollars (\$337,584) and will therefore be required to pay an additional two million seven hundred twelve thousand four hundred and sixteen dollars (\$2,712,416) to fully fund the Gross Settlement Amount. Under the terms of the proposed Settlement, one hundred thousand dollars (\$100,000) from the Gross Settlement Amount will be set aside as the “PAGA Payment.” The PAGA Payment is the total amount of civil penalties collected on behalf of the State of California. Twenty-two thousand five hundred dollars (\$75,000) from the PAGA Payment, or seventy-five percent (75%) of the PAGA Payment, will be sent to the State of California. Eligible Aggrieved Employees will share the remaining seven thousand five hundred dollars (\$25,000), or twenty-five percent (25%) of the PAGA Payment, based on the number of pay periods they worked during the PAGA Timeframe.

Because these penalties (the \$100,000 PAGA Payment) can only be sought by or on behalf of the State of California, Eligible Aggrieved Employees cannot exclude themselves from the PAGA portion of the Settlement. Therefore, if the Court approves the proposed Settlement, all Eligible Aggrieved Employees will give up the right to sue the Released Parties for the PAGA Released Claims, described in greater detail in Section No. 9 below. However, all Eligible Aggrieved Employees are also Class Members and may therefore exclude themselves from the class portion of the proposed Settlement and retain the right to sue the Released Parties for the Released Claims, described in greater detail in Section No. 9 below.

Because Plaintiffs are acting on behalf of the State of California with respect to the representative (PAGA), portion of the proposed Settlement, Plaintiffs must also keep the LWDA informed of any legal action taken with respect to the Action and the proposed Settlement. For example, Plaintiffs are required to file with the LWDA a copy of the proposed Settlement Agreement as well as any revised versions of the Settlement Agreement and the papers Plaintiffs have filed and will file with the Court to obtain both preliminary and final approval of the Settlement. This is not required for class-only settlements.

#### **6. *How Do I Dispute the Information Included in This Notice?***

Section No. 10 below states the number of workweeks with which you have been credited – meaning the number of workweeks you worked during the Class Period, based on Defendant’s records – and the estimated amount of your Individual Settlement Share, based on this number of workweeks. If you are also an Eligible Aggrieved Employee, Section No. 10 below also states the number of pay periods with which you have been credited – meaning the number of pay periods you worked during the PAGA Timeframe, based on Defendant’s records – and the estimated amount of your portion of the PAGA Payment. If you believe the number of workweeks and/or

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Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

pay periods with which you have been credited, and therefore the estimated amount of your Individual Settlement Share and/or portion of the PAGA Payment, is inaccurate, you may dispute this information.

If you choose to dispute the information included in this Notice, you must do so in writing. You must also produce and submit evidence to the Settlement Administrator showing that the disputed information is inaccurate. You are permitted to submit copies of such evidence – original versions are not required. If the Settlement Administrator does not receive evidence from you rebutting the disputed information, the number of workweeks and/or pay periods contained in Defendant’s records will be presumed correct, and your challenge will be rejected by the Settlement Administrator. However, if you do submit evidence rebutting the disputed information, the Parties will evaluate this evidence and make the final decision as to the number of workweeks and/or pay periods with which you will be credited.

Your dispute should be signed and dated and must be mailed, along with your supporting evidence, by first-class U.S. mail, **postmarked no later than [Response Deadline]** to: **THE SIERRA NEVADA BREWING CO. SETTLEMENT ADMINISTRATOR C/O CPT GROUP, INC., [INSERT ADDRESS]**. You are encouraged to keep copies of any and all evidence you submit to the Settlement Administrator.

## **7. *How Do I Object To The Settlement?***

If you are a Class Member who does not opt out of the class portion of the Settlement, you may object to the class portion of the Settlement, personally or through an attorney, by sending a timely written objection to the Settlement Administrator. Objections should be signed and dated and must be mailed by first-class U.S. mail, **postmarked no later than [Response Deadline]** to: **THE SIERRA NEVADA BREWING CO. SETTLEMENT ADMINISTRATOR C/O CPT GROUP, INC., [INSERT ADDRESS]**.

Objections should: (a) state the objecting Class Member’s full name, address, and telephone number, and the name and address of counsel, if any; (b) describe, in clear and concise terms, the reasons for objecting and the legal and factual arguments supporting the objection; (c) identify any evidence supporting the factual basis for the objection; (d) be signed by the objecting Class Member, his or her lawful representative, or his or her attorney, if any; and (e) state whether the objecting Class Member (or someone on his or her behalf) intends to appear at the Final Approval Hearing. Though you are encouraged to include all the foregoing information in your objection, the inclusion of all such information is not a condition for the submission of a valid objection. Your objection will be valid if it is postmarked on or before **[Response Deadline]** and provides enough information to allow the Settlement Administrator to identify you and understand that you object to the proposed Settlement or some term(s) of the Settlement.

Class Members may appear at the Final Approval Hearing, either in person or through their own counsel, and orally object to the Settlement. Class Members’ timely and valid objections to the Settlement will still be considered even if the objector does not appear at the Final Approval Hearing.

Class Members who fail to object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Settlement. Again, to be valid and effective, any written objections must be mailed to the Settlement Administrator postmarked on or before **[Response Deadline]**.

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If the Court approves the Settlement, the objecting Class Member will be mailed an Individual Settlement Share, and, if the Class Member is also an Eligible Aggrieved Employee, his or her portion of the PAGA Payment, and the Class Member will be bound by the terms of the Settlement, meaning the Class Member will be unable to sue for the claims resolved in the Settlement (i.e., the Released Claims, and the PAGA Released Claims if the Class Member is also an Eligible Aggrieved Employee).

#### **8. *How Do I Opt Out Or Exclude Myself From This Settlement?***

If you do not wish to participate in the class portion of the Settlement, you may be excluded from the class portion of the Settlement (i.e., “opt out”) by sending a timely opt out form to the Settlement Administrator. A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT OUT’ FORM) CLASS ACTION SETTLEMENT”) (“Exclusion Form”) has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes this same information. If you opt out of the Settlement, you will not be releasing the claims set forth in Section No. 9. The Exclusion Form should be signed and dated and must be mailed by first-class U.S. Mail, **postmarked no later than [Response Deadline]** to: **THE SIERRA NEVADA BREWING CO. SETTLEMENT ADMINISTRATOR C/O CPT GROUP, INC., [INSERT ADDRESS]**. You cannot exclude yourself by phone.

The Exclusion Form should: (a) include the Class Member’s name, address, and the last four digits of his or her Social Security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than **[Response Deadline]**. The Court will exclude any Class Member who submits a timely Exclusion Form in this manner. Though you are encouraged to include all the foregoing information in your request for exclusion, the inclusion of all such information is not a condition for the submission of a valid request for exclusion. A request for exclusion will be deemed valid if it is postmarked no later than **[Response Deadline]** and provides sufficient information to allow the Settlement Administrator to identify the Class Member and understand the Class Member’s request. However, Exclusion Forms that are not timely submitted will be deemed null, void, and ineffective.

Class Members may only opt out of the class portion of the Settlement. Class Members who are also Eligible Aggrieved Employees cannot opt out of the PAGA portion of the Settlement. Therefore, a Class Member who submits a valid and timely Exclusion Form will not release the Released Claims, as described in Section No. 9 below. However, if such a Class Member is also an Eligible Aggrieved Employee, the Class Member will still release the PAGA Released Claims, as described in Section No. 9 below.

Any Class Member who fails to submit a valid Exclusion Form on or before **[Response Deadline]** shall be bound by all terms of the Settlement, release, and any Judgment entered in the Action if the Settlement receives final approval from the Court.

You are responsible for ensuring that the Settlement Administrator receives any request for exclusion you submit.

#### **9. *How Does This Settlement Affect My Rights? What Are the Released Claims and PAGA Released Claims?***

If the Court approves the proposed Settlement, the Court will enter a Final Judgment. All Class Members who do not opt out of the class portion of the Settlement (“Participating Class Members”) and all Eligible Aggrieved Employees will be bound by the Court’s Final Judgment and will fully release and discharge Defendant Sierra Nevada Brewing Co. and its affiliated companies (including People 2.0 Global LLC dba Allevity Recruiting &

Staffing fka Anderson and Associates (“Allevity”)) and their respective parent companies, subsidiaries, affiliates, shareholders, members, owners, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors and assigns (“Released Parties”). All Participating Class Members will release the Released Parties from the Released Claims, and all Eligible Aggrieved Employees will release the Released Parties from the PAGA Released Claims upon final approval of the Settlement by the Court. The Released Claims and the PAGA Released Claims are defined below.

#### **A. Released Claims**

Upon Defendant’s funding of the entire Gross Settlement Amount according to the terms of the Settlement Agreement, in exchange for the consideration provided by the Settlement Agreement, Plaintiffs and the Participating Class Members shall release the Released Parties from all claims made or which could have been made based on the facts pled in the Action, from October 17, 2017, through January 31, 2023 including the claims (1) Failure to Pay Overtime Wages (Labor Code §§ 510 and 1198); (2) Failure to Provide Timely Off-Duty Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Labor Code §§ 1194 and 1197); (5) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201 and 202); (6) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (7) Failure to properly calculate and pay sick leave by using the regular rate of pay or otherwise (Labor Code section 246); (8) Failure to Reimburse for Reasonable Business Expenses (Labor Code §§ 2800 and 2802); (9) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*); and (10) Violation of Labor Code §§ 2698 *et seq.*

The Released Claims expressly exclude the PAGA Released Claims, defined below, and Participating Class Members will not release the PAGA Released Claims unless such Participating Class Members are also Eligible Aggrieved Employees. Participating Class Members who are also Eligible Aggrieved Employees shall release the PAGA Released Claims, in addition to releasing the Released Claims, upon Defendant’s funding of the entire Gross Settlement Amount according to the terms of the Settlement Agreement, as described below.

#### **B. PAGA Released Claims**

Upon Defendant’s funding of the entire Gross Settlement Amount according to the terms of the Settlement Agreement, in exchange for the consideration provided by the Settlement Agreement, Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, the Eligible Aggrieved Employees, shall release the Released Parties from all claims made or which could have been made for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*, based on the facts pled in Plaintiff’s letter to the LWDA dated October 26, 2022, and the Action, from October 26, 2021, through January 31, 2023 including the claims: (1) Failure to Pay Overtime Wages (Labor Code §§ 510 and 1198); (2) Failure to Provide Timely Off-Duty Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Labor Code §§ 1194 and 1197); (5) Failure to Timely Pay All Wages Due at Separation (Labor Code §§ 201 and 202); (6) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (7) Failure to properly calculate and pay sick leave by using the regular rate of pay or otherwise (Labor Code section 246); (8) Failure to Reimburse for Reasonable Business Expenses (Labor Code §§ 2800 and 2802); (9) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*); and (10) Violation of Labor Code §§ 2698 *et seq.*



As explained earlier in this Notice, Eligible Aggrieved Employees do not have the right to opt out of the PAGA portion of the proposed Settlement. Thus, upon final approval of the Settlement by the Court, the Eligible Aggrieved Employees will give up the right to sue the Released Parties for the PAGA Released Claims, as described in the paragraph above.

#### **10. *How Much Can I Expect to Receive From This Settlement?***

As stated in Section No. 5 above, the total maximum amount that Defendant will be required to pay under the Settlement Agreement is \$3,050,000 (“Gross Settlement Amount”).

The Gross Settlement Amount will be used to pay the following amounts, subject to Court approval: (1) a \$10,000 Class Representative Enhancement Payment to each Plaintiff Anthony Penca and Christopher Davidson; (2) up to \$20,000 in Administration Costs to the Settlement Administrator; (3) the \$100,000 PAGA Payment, seventy-five percent (75%) of which (\$75,000) shall be paid to the LWDA, and twenty-five percent (25%) of which (\$25,000) shall be distributed to Eligible Aggrieved Employees, on a pro-rata basis; (4) a \$1,159,000 Attorney Fee Award to Class Counsel (38% of the Gross Settlement Amount); and (5) a \$25,000 Cost Award to Class Counsel. The amount that remains after all payments are made is the Net Settlement Amount, which is currently estimated to be \$1,726,000. Defendant will receive a credit of \$337,584, which will result in the amount of at least \$1,388,416 being distributed.

Ninety percent (90%) of the Net Settlement Amount shall be designated to pay Class Members directly hired by Defendant and ten percent (10%) of the Net Settlement Amount shall be designated to pay the Class Members hired or working for Defendant through a staffing agency (“Temp” employees).

##### **A. How Will My Individual Settlement Share Be Calculated?**

The Net Settlement Amount will be paid to the Participating Class Members in the form of Individual Settlement Shares. If the Court approves any of the above-referenced payments in smaller amounts, the Net Settlement Amount will be larger. The Settlement Administrator will mail each Participating Class Member an Individual Settlement Share from the Net Settlement Amount that is equal to: (i) the number of workweeks the Participating Class Member worked during the Class Period, based on the Class Data provided by Defendant, (ii) divided by the total number of workweeks worked by any and all Participating Class Members collectively during the Class Period, based on the same Class Data, (iii) which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as one workweek for purposes of this calculation. Therefore, the value of each Participating Class Member’s Individual Settlement Share ties directly to the number of workweeks the Participating Class Member worked during the Class Period.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which Class Members may submit disputes regarding, objections to, or requests for exclusion from the Settlement concludes, based upon the calculation above, your approximate Individual Settlement Share from the Net Settlement Amount, is \$ [REDACTED], less taxes. This is based on Defendant’s records, which show you worked [REDACTED] workweeks during the Class Period as a directly-hired employee and worked [REDACTED] workweeks during the Class Period as a Temp employee. Defendant’s records show that you received \$ [REDACTED] in settlement during the course of this case. This amount will be credited (if any) against your Individual Settlement Share. The amount of your Individual Settlement Share will change if Class Members opt out of the class portion of the proposed Settlement, if workweek estimates change, and/or if the Court does not approve all the above-referenced payments from the Gross Settlement Amount in full.

Twenty percent (20%) of your Individual Settlement Share will be treated as unpaid wages. The wages portion of your Individual Settlement Share will be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and will be reported on an IRS Form W-2. Eighty percent (80%) of your Individual Settlement Share will be treated as penalties and interest. The penalties and interest portions of your Individual Settlement Share will be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and will be paid pursuant to an IRS Form 1099.

The Settlement Administrator will mail your Individual Settlement Share check to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

#### **B. How Will My Portion of the PAGA Payment Be Calculated?**

The Settlement Administrator will mail each Eligible Aggrieved Employee a check for the Eligible Aggrieved Employee's portion of the PAGA Payment, which will be equal to: (i) the number of pay periods the Eligible Aggrieved Employee worked during the PAGA Timeframe, based on the Class Data provided by Defendant, (ii) divided by the total number of pay periods worked by any and all Eligible Aggrieved Employees collectively during the PAGA Timeframe, based on the same Class Data, (iii) which is then multiplied by the \$25,000 of the PAGA Payment allocated to the Eligible Aggrieved Employees.

Based upon the calculation above, your approximate portion of the PAGA Payment is \$ [REDACTED]. This is based on Defendant's records, which show you worked [REDACTED] pay periods during the PAGA Timeframe. One hundred percent (100%) of this payment will be considered penalties, and you will be issued an IRS Form 1099 if your payment exceeds \$600. You are responsible for paying any federal, state, or local taxes owed as a result of this payment. The Settlement Administrator will mail a check for your portion of the PAGA Payment to the address the Settlement Administrator has on record for you. Therefore, it is important that you keep the Settlement Administrator informed of any change of address.

If you are not an Eligible Aggrieved Employee, this subsection B does not apply to you.

#### **C. When Will My Payment From the Settlement Be Mailed?**

Within thirty (30) calendar days of the Effective Final Settlement Date, Defendant shall deposit the additional \$2,712,416 needed to fund the Gross Settlement Amount of \$3,050,000 into a Qualified Settlement Fund. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share. The Effective Final Settlement Date will be the later of the following: (i) if no objections to the Settlement have been filed, or timely objections have been filed and then withdrawn, then the date the Court enters judgment granting final approval; (ii) if an objection to the Settlement has been filed, then the date on which time expires to file an appeal of the Court's grant of final approval; or (iii) if an objection was filed and a notice of appeal of the Court's grant of final approval was timely filed, then the date the appeal is finally resolved, with the grant of final approval unaffected.

Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment – including the payment to the LWDA and individual Eligible Aggrieved Employees' payments, and the



Administration Costs. The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment, or \$75,000, to the LWDA for settlement of the PAGA claim.

It is strongly recommended that upon receipt of your Individual Settlement Share check and, if you are an Eligible Aggrieved Employee, your check for your portion of the PAGA Payment, you cash your check(s) immediately or before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the checks and pay the amount of the Individual Settlement Share(s) and/or portion(s) of the PAGA Payment to Community Legal Information Center in Chico, California.

#### **11. *How Will the Attorneys for the Class and the Class Representative Be Paid?***

The attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiffs and the Class shall be paid an amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount (or \$1,159,000) for attorneys' fees and up to \$25,000 for litigation costs.

Defendant has paid all its own attorneys' fees and costs.

As set forth in Section No. 10 above, Plaintiffs will also be paid Class Representative Enhancement Payments, subject to Court approval.

#### **12. *Final Approval Hearing***

The Court will hold a Final Fairness Hearing concerning the proposed Settlement on [date of final approval hearing], at [time a.m./p.m.], before the Honorable Tamara L. Mosbarger at the Superior Court of California, County of Butte, located at 1775 Concord Avenue, Chico, California 95928, Department 1 (North Butte County Courthouse). You are not required to appear at this hearing. Any changes to the time, date, or location of the hearing will be available on this website: [INSERT WEBSITE ADDRESS]. This website will also include, among other things, the complaint Plaintiff Anthony Penca filed on November 24, 2021, generic copies of this Notice and the Exclusion Form, all papers filed in connection with the preliminary approval motion (including all orders filed by the Court), all papers filed in connection with the Final Approval Hearing (including the fee motion and the final approval motion), and, if the Settlement is approved, the Final Judgment.

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the "The Sierra Nevada Brewing Co. class action and PAGA settlement."

This Notice does not contain all the terms of the proposed Settlement or all the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Superior Court of California, County of Butte, located at 1775 Concord Avenue, Chico, California 95928, Department 1 (North Butte County Courthouse), between 8:00 a.m. and 5:00 p.m.

You may also contact Class Counsel with any questions you may have regarding the Action, the proposed Settlement of the Action, or this Notice or any other documents or information you have received pertaining to the Action and the Settlement. You may contact Class Counsel directly by visiting Justice Law Corporation at 751 North Fair Oaks Avenue, Suite 101, Pasadena, California 91103 during regular business hours, from 9:00

a.m. to 6:00 p.m., or by calling (818) 230-7502. Class Counsel's contact information is also included above in Section No. 4 of this Notice. Class Counsel will provide you with an electronic copy of the Settlement documents or case documents free of charge.

**PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.**

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Questions? Call the Settlement Administrator toll free at [phone number]  
[URL of Settlement Website]

# **EXHIBIT B**



**ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT**

Superior Court of California, County of Butte

*Penca v. Sierra Nevada Brewing Co.*

Case No. 21CV02883

**DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT.**

**THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN [RESPONSE DEADLINE]. IT MUST BE SENT VIA REGULAR U.S. MAIL.**

PLEASE MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:  
**THE SIERRA NEVADA BREWING CO. SETTLEMENT ADMINISTRATOR, C/O CPT GROUP, INC.**  
**[INSERT ADMINISTRATOR ADDRESS]**

You are a Class Member if you were employed by Sierra Nevada Brewing Co. ("Sierra Nevada Brewing") as a hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of Defendant within the State of California at any time during the period from October 17, 2017, through January 31, 2023 ("Class Period").

You are an Eligible Aggrieved Employee if you were employed by Sierra Nevada Brewing as an hourly-paid or non-exempt employee within the State of California (whether hired directly or through a staffing agency or labor contractor) at any time during the period from October 26, 2021, through January 31, 2023 ("PAGA Timeframe"). By signing and mailing this document to the Settlement Administrator at the address above, you are deciding to exclude yourself from the Class and deciding not to participate in the class portion of the proposed settlement of the action entitled *Penca v. Sierra Nevada Brewing Co.*. However, Eligible Aggrieved Employees may not exclude themselves from the PAGA portion of the proposed settlement.

**IT IS MY DECISION NOT TO PARTICIPATE IN THE ACTION REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT SHARE AND ANY CLAIMS I HAVE DURING THE CLASS PERIOD WILL NOT BE RELEASED.**

**However, if I am an Eligible Aggrieved Employee and qualify for a payment from the PAGA Payment, I will be mailed a check for that payment regardless of whether I exclude myself from the class portion of the proposed settlement, and I will release any claims I have during the PAGA Timeframe.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Last four digits of Social Security number)

\_\_\_\_\_  
(Type or print name and former name(s))

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Address)