

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG15781726

Case name: Gonzalez v. The Wine Group, LLC

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this Order was mailed first class, postage prepaid, in a sealed envelope, addresses shown below, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Dated: July 12, 2018

Jhalisa A. Castaneda

Courtroom Clerk, Dept. 23

▼ Alwazian, Edwin
Lawyers for Justice, PC
410 West Arden Avenue
Suite 203
Glendale, CA 91203

▼ **Lacunza, Scott C.**
Jackson Lewis PC
200 Spectrum Center Drive
Suite 500
Irvine, CA 92618

▼ Saltzman, Stanley D.
MARLIN & SALTZMAN
29800 Agoura Hills Road
Suite 210
Agoura Hills, CA 913011555

Dept. 17

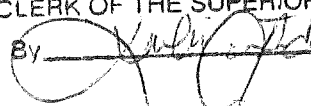
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1 Edwin Aiwazian (SBN 232943)
 Arby Aiwazian (SBN 269827)
 2 Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
 3 410 West Arden Avenue, Suite 203
 Glendale, California 91203
 4 Tel: (818) 265-1020 / Fax: (818) 265-1021

5 Stanley D. Saltzman (SBN 90058)
MARLIN & SALTZMAN, LLP
 6 29229 Canwood Street, Suite 208
 Agoura Hills, California 91301
 7 Tel: (818) 991-8080/Fax: (818) 991-8081

8 *Attorneys for Plaintiffs*

FILED
ALAMEDA COUNTY

JUL 11 2018
CLERK OF THE SUPERIOR COURT
By  Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF ALAMEDA**

12 **ELIAZAR GONZALEZ**; individually, and
 on behalf of other members of the general
 13 public similarly situated and on behalf of other
 aggrieved employees pursuant to the
 14 California Private Attorneys General Act;
LINDA PASILLAS; individually, and on
 15 behalf of other members of the general public
 similarly situated

16 **Plaintiffs,**

17 **vs.**

18 **THE WINE GROUP, LLC**, a California
 19 corporation; and **DOES 1 through 100,**
 inclusive,

20 **Defendants.**

Case No.: RG15781726 **FAX FILE**

Honorable Ioana Petrou
 Department 17

CLASS ACTION

**JOINT STIPULATION TO MODIFY
 CLASS ACTION SETTLEMENT;
 [PROPOSED] ORDER THEREON**

Complaint Filed: August 12, 2015
 FAC Filed: September 14, 2017
 Jury Trial Date: None Set

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1 Plaintiffs Eliazar Gonzalez and Linda Pasillas (collectively, "Plaintiffs"), individually, and
2 on behalf of the Class, and Defendant The Wine Group, LLC ("Defendant") (collectively, the
3 "Parties"), by and through their respective counsel of record, hereby stipulate as follows:

4 WHEREAS, on August 12, 2015, Plaintiff Eliazar Gonzalez commenced the above-entitled
5 putative class action and representative action against Defendant in the Superior Court of the State
6 of California, County of Alameda, Case No. RG15781726 (the "Action");

7 WHEREAS, on September 14, 2017, pursuant to stipulation of the Parties and order by the
8 Court thereon, Plaintiff Gonzalez filed a First Amended Complaint for Damages & Enforcement
9 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Action
10 which added Linda Pasillas as a named plaintiff in the Action;

11 WHEREAS, on or about February 5, 2018, the Parties executed the Joint Stipulation of
12 Class Action and PAGA Settlement ("Settlement Agreement");

13 WHEREAS, on February 15, 2018, Plaintiffs filed a Motion for Preliminary Approval of
14 Class Action Settlement;

15 WHEREAS, on March 14, 2018, the Court entered an Order Granting Preliminary
16 Approval of Class Action Settlement ("Preliminary Approval Order"), preliminarily approving the
17 Settlement, provisionally appointing Plaintiffs as Class Representatives, provisionally appointing
18 Lawyers for Justice, PC and Marlin & Saltzman, LLP as Class Counsel, provisionally appointing
19 Simpluris, Inc. ("Simpluris") as the class action settlement administrator ("Settlement
20 Administrator"), setting a Final Approval Hearing on August 1, 2018 at 9:00 a.m. (Reservation No.
21 R-1942112), approving the notice and settlement procedures set forth in the Parties' Settlement
22 Agreement, and conditionally certifying the following Class for settlement purposes only:

23 All current and former non-exempt employees who were employed by Defendant in
24 California at any time during the period from August 12, 2011 to March 14, 2018
25 ("Class" or "Class Members");

26 WHEREAS, on April 13, 2018, Defendant provided Simpluris with a list of the names, last
27 known addresses, Social Security numbers, employee ID numbers, start and end dates of
28 employment as non-exempt employee in California during the Class Period, and Covered
29 Workweeks, for all Class Members (the "Class Data List");

1 WHEREAS, during the settlement negotiation, the Gross Settlement Amount was
2 determined in part based on Defendant's estimation and representation that the total Covered
3 Workweeks were approximately 200,000 at the time of the second mediation in December 2016;

4 WHEREAS, Simpluris processed the Class Data List and determined that the total Covered
5 Workweeks as of the December 2016 mediation were approximately 240,000;

6 WHEREAS, to allow Parties to meet and confer about the additional Covered Workweeks,
7 Simpluris has not yet undertaken the mailing of the Court-approved Notice of Proposed Class
8 Action Settlement ("Class Notice") to the Class;

9 WHEREAS, based on the Preliminary Approval Order and Settlement Agreement, the
10 deadline for Simpluris to mail the Class notice to the Class was April 28, 2018, and Class
11 Members' deadlines to submit objections to the Settlement, disputes regarding the Covered
12 Workweeks credited to them, and/or Requests for Exclusion, to Simpluris, will be forty-five (45)
13 calendar days from the date on which the Class Notice is mailed to the Class.

14 WHEREAS, Parties have met and conferred and negotiated a modification of the
15 Settlement Agreement, to increase the Gross Settlement Amount in order to account for the
16 additional Covered Workweeks, and they believe the Settlement Agreement, modified as set forth
17 herein, is in the best interest of the Class Members and continues to fall within the range of possible
18 approval as fair, reasonable, and adequate;

19 **THEREFORE**, subject to this Court's approval, **THE PARTIES HEREBY STIPULATE**
20 to modify the Settlement Agreement, pursuant to Section 39 of the Settlement Agreement, and to an
21 order by the Court, as follows:

- 22 1. The Gross Settlement Amount shall be increased from \$6,500,000 to \$6,800,000.
- 23 2. The amount that is allocated toward payment of attorneys' fees from the Gross
24 Settlement Amount, i.e. the amount not to exceed \$2,275,000, which is thirty-five percent (35%) of
25 the original Gross Settlement Amount of \$6,500,000, shall remain the same.
- 26 3. The amount that is allocated toward penalties recoverable under PAGA ("PAGA
27 Payment") shall be increased from \$100,000 to \$104,615.38, which shall be distributed seventy-five
28 percent (i.e. \$78,461.54) to the Labor and Workforce Development Agency ("LWDA Payment")

1 and twenty-five percent (i.e. \$26,153.84) shall be a part of the Net Settlement Amount for
2 distribution to Settlement Class Members on a *pro rata* basis in accordance with the Settlement
3 Agreement.

4 4. The Net Settlement Amount available for payment to Settlement Class Members
5 shall be calculated by deducting from the Gross Settlement Amount of \$6,800,000 the following
6 sums, subject to approval by the Court: (a) attorneys' fees in an amount not to exceed \$2,275,000;
7 (b) reasonable litigation costs/expenses in an amount not to exceed \$70,000; (c) service payments in
8 an amount not to exceed \$10,000 each to Plaintiffs Eliazar Gonzalez and Linda Pasillas; (d) costs of
9 settlement administration in an amount not to exceed \$25,000, (e) the LWDA Payment; and (6) the
10 employer's share of taxes and contributions with respect to the wages portion of the Individual
11 Settlement Shares.

12 5. The previously-approved Class Notice shall be modified to:

13 a. Reflect that the maximum settlement consideration (i.e. the Gross Settlement
14 Amount) is \$6,800,000;

15 b. Delete reference to attorneys' fees as "35% of the Gross Settlement Amount"
16 and to instead reflect that attorneys' fees are not to exceed \$2,275,000;

17 c. To reflect that the amount allocated toward PAGA penalties is \$104,615.38
18 with the Labor and Workforce Development Agency's share of said penalties
19 being \$78,461.54;

20 d. That the Joint Stipulation of Class Action and PAGA Settlement, together
21 with this Stipulation, is the Settlement Agreement;

22 e. To reflect the date and time that the Court sets for the Final Approval
23 Hearing by way of order approving this Stipulation.


24 6. Simpluris shall undertake the mailing of the Court-approved Class Notice within
25 twenty (20) calendar days of entry of an order by the Court approving this Stipulation, and Class
26 Members' deadlines to submit objections to the Settlement, disputes regarding the Covered
27 Workweeks credited to them, and/or Requests for Exclusion, to Simpluris, shall be forty-five (45)
28 calendar days from the date on which the Class Notice is mailed to the Class.

1 7. The Final Approval Hearing that is currently scheduled for August 1, 2018 at 9:00
2 a.m. (Reservation No. R-1942112) shall be continued by ninety (90) calendar days, to such other
3 date and time that the Court deems appropriate, and the deadline to file the motion for final
4 approval of the Settlement and for Attorneys' Fees and Litigation Expenses, Service Payment, and
5 Settlement Administration Costs, with the appropriate declarations and supporting evidence,
6 including the Settlement Administrator's declaration, shall be sixteen (16) court days before the
7 continued Final Approval Hearing date.

8 **IT IS SO STIPULATED.**

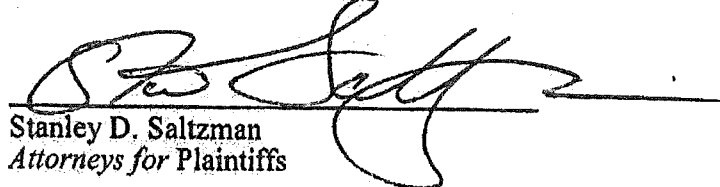
9 Date: July 9, 2018

LAWYERS for JUSTICE, PC

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11 By: 
12 Edwin Aiwazian
13 Joanna Ghosh
14 Attorneys for Plaintiffs

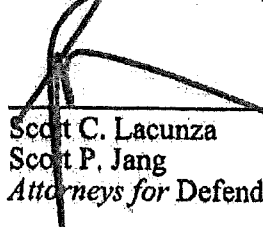
15 Date: July 9, 2018

MARLIN & SALTZMAN, LLP

16 By: 
17 Stanley D. Saltzman
18 Attorneys for Plaintiffs

19 Date: July 9, 2018

JACKSON LEWIS, P.C.

20 By: 
21 Scott C. Lacunza
22 Scott P. Jang
23 Attorneys for Defendant

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[PROPOSED] ORDER

The Court, having reviewed the parties' Stipulation, orders as follows:

1. The Parties' Stipulation is approved.
2. The Gross Settlement Amount shall be increased from \$6,500,000 to \$6,800,000.
3. The amount that is allocated toward payment of attorneys' fees from the Gross Settlement Amount, i.e. the amount not to exceed \$2,275,000, which is thirty-five percent (35%) of the original Gross Settlement Amount of \$6,500,000, shall remain the same.

4. The amount that is allocated toward penalties recoverable under PAGA ("PAGA Payment") is increased from \$100,000 to \$104,615.38, which shall be distributed seventy-five percent (i.e. \$78,461.54) to the Labor and Workforce Development Agency ("LWDA Payment") and twenty-five percent (i.e. \$26,153.84) shall be a part of the Net Settlement Amount for distribution to Settlement Class Members on a *pro rata* basis in accordance with the Settlement Agreement.

5. The Net Settlement Amount available for payment to Settlement Class Members shall be calculated by deducting from the Gross Settlement Amount of \$6,800,000 the following sums, subject to approval by the Court: (a) attorneys' fees in an amount not to exceed \$2,275,000; (b) reasonable litigation costs/expenses in an amount not to exceed \$70,000; (c) service payments in an amount not to exceed \$10,000 each to Plaintiffs Eliazar Gonzalez and Linda Pasillas; (d) costs of settlement administration in an amount not to exceed \$25,000, (e) the LWDA Payment; and (6) the employer's share of taxes and contributions with respect to the wages portion of the Individual Settlement Shares.

6. The previously-approved Class Notice shall be modified to:
 - a. Reflect that the maximum settlement consideration (i.e. the Gross Settlement Amount) is \$6,800,000;
 - b. Delete reference to attorneys' fees as "35% of the Gross Settlement Amount" and to instead reflect that attorneys' fees are not to exceed \$2,275,000;

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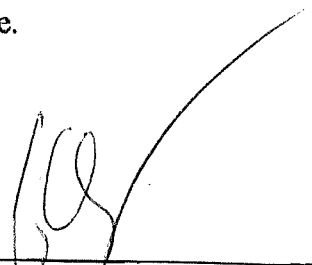
- c. To reflect that the amount allocated toward PAGA penalties is \$104,615.38 with the Labor and Workforce Development Agency's share of said penalties being \$78,461.54;
- d. That the Joint Stipulation of Class Action and PAGA Settlement, together with this Stipulation, is the Settlement Agreement;
- e. To reflect the date and time that the Court sets for the Final Approval Hearing by way of order approving this Stipulation.

7. Simpluris shall undertake the mailing of the Court-approved Class Notice within twenty (20) calendar days of entry of an order by the Court approving this Stipulation, and Class Members' deadlines to submit objections to the Settlement, disputes regarding the Covered Workweeks credited to them, and/or Requests for Exclusion, to Simpluris, shall be forty-five (45) calendar days from the date on which the Class Notice is mailed to the Class.

8. The Final Approval Hearing that is currently scheduled for August 1, 2018 at 9:00 a.m. (Reservation No. R-1942112) shall be continued to 10/30/2018 at 9 a.m./p.m. (Reservation No. 1942112), and the deadline to file the motion for final approval of the Settlement and for attorneys' fees and litigation costs and expenses, Service Awards, and costs of settlement administration, with the appropriate declarations and supporting evidence, including the Settlement Administrator's declaration, shall be sixteen (16) court days before the continued Final Approval Hearing date.

IT IS SO ORDERED.

Dated: 7/11/18



 The Honorable Ioana Petrou- *Seigneur*
 Judge of the Alameda Superior Court