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12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

14 Gene Jovich, Hung Tran, and Leonard Greulich
15 individually and on behalf of all others similarly
16 situated,

17 Plaintiffs,

18 vs.

19 Southern Wine & Spirits of America, Inc., a
Florida Corporation,

20 Defendant.
21

Case No.: CV 10-04405 JSW

**JOINT STIPULATION AND CLASS
ACTION SETTLEMENT AGREEMENT**

1 IT IS HEREBY STIPULATED AND AGREED, by and between plaintiffs Gene Jovich
2 (“Jovich”), Hung Tran (“Tran”) and Leonard Greilich (“Greilich”) (collectively referred to herein as
3 “Plaintiffs”), individually and on behalf of all others similarly situated, and defendant Southern Wine
4 & Spirits of America, Inc. (“SWS”), jointly referred to herein as the “Parties”, as follows:

5 **I. INTENTION OF THE PARTIES**

6 1. This Joint Stipulation and Class Action Settlement Agreement and all associated
7 exhibits and attachments (hereinafter “Settlement Agreement”), made and entered into by and between
8 Plaintiffs (each for himself and on behalf of the Settlement Class Members¹) and SWS, each with the
9 assistance of their respective counsel or attorneys of record, is intended to fully, finally, and forever
10 settle, compromise and discharge the Released Claims against the Released Parties arising from or
11 related to the Action, subject to the terms and conditions set forth herein. This Settlement Agreement
12 supersedes any and all prior agreements of the Parties concerning settlement of the Action and any
13 memoranda of understanding containing such agreements.

14 2. Because this Action was pled as a class action, this settlement must receive preliminary
15 and final approval by the Court. Accordingly, the Parties enter into this Settlement Agreement on a
16 conditional basis.

17 3. In the event that this Settlement Agreement is not approved by the Court, fails to
18 become effective, or is reversed, withdrawn or modified by the Court or any other court with
19 jurisdiction over the Action, the Settlement Agreement shall become null and void *ab initio* and shall
20 have no bearing on, and shall not be admissible in connection with, further proceedings in this Action,
21 including proceedings to determine whether class certification would be appropriate in any other
22 context in this litigation, or in any other judicial, administrative or arbitral proceeding for any purpose
23 or with respect to any issue, substantive or procedural, and none of the Parties to this Settlement
24 Agreement will be deemed to have waived any claims, objections, defenses, privileges or arguments
25 with respect to the issue of class certification or the merits of Plaintiffs’ claims.

26
27 _____
28 ¹ Capitalized terms are defined in Section III below.

1 4. This Settlement Agreement is a settlement document and shall, pursuant Federal Rules
2 of Evidence 408 and 501, and any similar federal, state or local statute or rule, not be disclosed in any
3 manner unless and until it is filed as a public record document with the Court, and neither its
4 acceptance by the Parties nor its filing with the Court shall, in themselves, render this Settlement
5 Agreement admissible in evidence in any other proceeding, subject to the limited exception that it shall
6 be admissible in an action or proceeding to approve, interpret or enforce this Settlement Agreement.
7 The Parties agree that this paragraph is not intended to limit in any way any protections afforded by
8 Federal Rules of Evidence 408, 501 or any similar, applicable federal, state or local statute or rule
9 regarding admissibility of this Settlement Agreement.

10 **II. LITIGATION BACKGROUND**

11 5. This action was filed in Alameda County Superior Court on August 17, 2010. SWS
12 removed the case to the Northern District of California on September 29, 2010, where it was assigned
13 to Honorable Jeffrey S. White. Plaintiffs' Second Amended Complaint (SAC), filed February 22,
14 2012, is the operative pleading. The SAC alleges claims against SWS on behalf of a class of Sales
15 Representatives who have been employed by SWS in California from August 17, 2006 to May 31,
16 2012.

17 6. Plaintiffs allege that Sales Representatives' outside sales positions require them to
18 spend most of their work day travelling and away from office locations, that Sales Representatives
19 incur substantial expenses in using their own cars and cellular phones to perform their jobs, and SWS
20 has failed to reimburse Sales Representatives for these expenses. On the basis of these allegations,
21 Plaintiffs allege that SWS has violated California Labor Code section 2802 and California's Unfair
22 Competition Law, Business & Professions Code sections 17200 *et seq.*

23 7. In its answers to the original and amended Complaints, SWS has denied Plaintiffs'
24 claims. SWS further has averred that the case should not be certified as a statewide class action, that it
25 did not unlawfully fail to reimburse Sales Representatives for business expenses, and that it has
26 complied with California law by reimbursing Sales Representatives for such business expenses through
27 their compensation. In settling the Action, SWS maintains those positions.

1 8. The Parties have exchanged initial disclosures and have conducted written discovery
2 and depositions prior to May 2011. Plaintiffs served, and SWS answered, one set of written discovery,
3 including Special Interrogatories and Requests for Production of Documents. Plaintiffs took a two-day
4 deposition of SWS's designated witness pursuant to Rule 30(b)(6) regarding SWS's organization,
5 business, and management; Sales Representatives' job duties; expenses incurred by Sales
6 Representatives; and SWS's policies for reimbursement of these expenses. SWS also served, and
7 Plaintiffs answered, Requests for Production of Documents, and SWS took the depositions of Plaintiffs
8 Jovich and Tran. Plaintiffs also interviewed and gathered declarations from seventeen (17) current and
9 former SWS Sales Representatives and from one employee who supervised the work of Sales
10 Representatives.

11 9. The Parties participated in a full-day mediation before the Honorable Edward A. Panelli
12 (retired) of JAMS on May 4, 2011. The mediation was unsuccessful.

13 10. Following the unsuccessful mediation, the Parties resumed litigation. In an effort to
14 obtain an objective estimate of potential damages in this case, the Parties jointly retained a survey
15 expert to estimate the number of miles driven for business by a representative sample of currently
16 employed Sales Representatives. The expert conducted surveys in September-October 2011 and in
17 February-March 2012, and reported the results of the surveys to the Parties. In addition, Plaintiffs took
18 several further short Rule 30(b)(6) depositions of SWS and continued to interview and gather
19 declarations current and former SWS Sales Representatives, resulting in the exchange of an additional
20 thirty-one (31) declarations. During the same period, SWS took the deposition of Plaintiff Greilich,
21 who had been added as a class representative after May 2011.

22 11. Following the conclusion of these preparations, the Parties agreed to attend a second
23 mediation session with the Honorable Edward A. Panelli (Retired) on May 9, 2012. After a full day of
24 arms-length negotiation, assisted by Justice Panelli, the Parties agreed to the settlement in general
25 terms which are more fully specified in this Settlement Agreement.

26 12. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
27 discharge all disputes and claims against the Released Parties arising from or related to the Action, and
28

1 that this Settlement Agreement shall constitute a full and complete settlement and release of all the
2 Released Parties from all of the claims averred in the Action.

3 **III. DEFINITIONS**

4 13. The “Action” means the lawsuit entitled *Jovich et al. v. Southern Wine & Spirits of*
5 *America, Inc.*, Case No. CV 10-04405 JSW, pending in United States District Court for the Northern
6 District of California, San Francisco Division.

7 14. “Claim Form” means the form which shall be attached to the Class Notice to be mailed
8 to Former Employee Class Members, which shall be substantially in the form of Exhibit D attached
9 hereto.

10 15. “Class” means the collective group of those individuals who are Class Members.

11 16. “Class Counsel” means the law firms of Goldstein, Demchak, Baller, Borgen &
12 Dardarian of Oakland, California, and HammondLaw, PC of Los Angeles, California.

13 17. “Class Member” or “Member of the Class” means an individual who was employed by
14 SWS as a Sales Representative during the Class Period.

15 18. “Class Notice” means a notice to be submitted for approval by the Court substantially in
16 the form attached hereto as Exhibit B.

17 19. “Class Participation Award” means the payment of \$250.00 to each Participating
18 Settlement Class Member.

19 20. “Class Period” means the period from August 17, 2006 through May 31, 2012.

20 21. “Class Representatives” means Gene Jovich, Hung Tran, and Leonard Greulich, the
21 named Plaintiffs in the Action.

22 22. “Court” means the United States District Court for the Northern District of California,
23 San Francisco Division.

24 23. “Current Employee Class Member” means any Class Member employed by SWS in any
25 position as of May 31, 2012.

26 24. “Expense Allowance Periods” means the periods of time associated with the various
27 Expense Allowance amounts provided by the collective bargaining agreements applicable to Class
28 Members during the Class Period, as specified in paragraph 64.3.2 below.

1 25. “Expense Reimbursement Payment Fund” means the Net Settlement Fund less all Class
2 Participation Awards. This is the amount to be divided pro-rata to determine each Participating
3 Settlement Class Member’s Individual Expense Reimbursement Payment.

4 26. “Final Approval Date” means the date on which the Order of Final Approval is entered
5 in this matter.

6 27. “Final Approval Hearing” means a hearing set by the Court to take place after the
7 Notice Response Deadline for the purpose of (i) determining the fairness, adequacy and reasonableness
8 of the Settlement Agreement; (ii) determining the good faith of the Settlement Agreement; and (iii)
9 considering the Parties’ request for entry of Judgment.

10 28. “Former Employee Class Member” means any Class Member not employed by SWS in
11 any position as of May 31, 2012.

12 29. “Individual Expense Reimbursement Payment” means a Participating Settlement Class
13 Member’s pro rata share of the Expense Reimbursement Payments Fund.

14 30. “Judgment” means the judgment to be rendered by the Court pursuant to this Settlement
15 Agreement.

16 31. “Last Known Address” means the most recently recorded mailing address for a Class
17 Member as such information is contained in SWS’s payroll records.

18 32. “Net Settlement Fund” means the portion of the Total Settlement Sum which will be
19 distributed to Participating Settlement Class Members after deductions from the Total Settlement Sum
20 for: (a) Class Counsel’s attorneys’ fees and costs as provided for in Paragraph 59.1.1 hereof; (b)
21 settlement administration costs as set forth in Paragraph 59.1.2 hereof; (c) the Reserve Fund as set
22 forth in Paragraph 59.1.4 hereof, and (d) the service awards to Class Representatives as provided for in
23 Paragraph 59.1.3 hereto.

24 33. “Non-Settlement Class” means the collective group of all Class Members who properly
25 and timely submit a Request for Exclusion.

26 34. “Non-Settlement Class Member” or “Member of the Non-Settlement Class” means a
27 person who is a member of the Non-Settlement Class.
28

1 35. “Notice Mailing Deadline” means the date twenty (20) calendar days after the
2 Preliminary Approval Date.

3 36. “Notice Response Deadline” means the date sixty (60) calendar days after the Class
4 Notice is mailed to the Class Members by the Settlement Administrator.

5 37. “Order of Final Approval” or “Order Granting Final Approval of Settlement” means an
6 order to be submitted by Plaintiffs for entry and filing by the Court as specified in this Settlement
7 Agreement.

8 38. “Participating Settlement Class Member” means any Current Employee Class Member
9 who does not submit a valid and timely Request for Exclusion, and any Former Employee Class
10 Member who submits a valid and timely Claim Form to the Settlement Administrator. Only
11 Participating Settlement Class Members will receive a Settlement Award.

12 39. “Preliminary Approval Date” means the date on which the Court enters the Preliminary
13 Approval Order.

14 40. “Preliminary Approval Order” or “Order Granting Preliminary Approval of Settlement”
15 means an order to be submitted by Plaintiffs for entry and filing by the Court, as specified in this
16 Settlement Agreement.

17 41. “Released Claims” means any and all claims, including Unknown Claims, causes of
18 action or demands against the Released Parties during the Class Period that (a) were asserted in this
19 Action, or (b) that arise from or are reasonably related to this Action or are reasonably related to any of
20 the allegations in Plaintiffs’ Second Amended Complaint, even if such claims were not asserted in this
21 Action, including: claims against SWS for alleged failure to reimburse business expenses under
22 California Labor Code section 2802, any claims or grievances alleging breach of provisions of the
23 Collective Bargaining Agreement regarding payment of the monthly expense allowance or the excess
24 mileage allowance, and claims for alleged unlawful, unfair, and/or fraudulent business practices under
25 California Business and Professions Code § 17200, *et seq.* arising from SWS’s alleged failure to
26 reimburse business expenses. Nothing in this Settlement Agreement shall be construed to bar any
27 claims by the Class Representatives or Settlement Class Members that may arise after the Class Period.
28 The release given by this Settlement Agreement also specifically excludes any claims the Plaintiffs and

1 Settlement Class Members may have that arise from time periods in which they were not Sales
2 Representatives during the Class Period.

3 42. "Released Parties" means SWS and each of its former and present parents, subsidiaries,
4 and affiliated corporations and entities, and each of their respective officers, directors, employees,
5 partners, insurers, shareholders and agents, and any other successors, assigns or legal representatives.

6 43. "Reserve Fund" means \$50,000 to be set aside from the Total Settlement Sum to pay
7 Class Members who are not initially located, or to pay additional amounts determined to be due to
8 Class Members after payments are initially made from the Net Settlement Fund, or to be otherwise
9 distributed as provided for in this Settlement Agreement.

10 44. "Request for Exclusion" means the written notice a Class Member is required to submit
11 to the Settlement Administrator no later than the Notice Response Deadline to request exclusion from
12 the Settlement Class containing the information set forth in Paragraph 62.1 hereof.

13 45. "Sales Representative" means any individual employed by SWS as a union sales
14 representative, including, but not limited to, the positions of PWS On-Sale Salesperson, PWS Off-Sale
15 Salesperson, PWS Combo Salesperson, SWS On-Sale Salesperson, SWS Off-Sale Salesperson and
16 SWS Combo Salesperson, and substantially similar variations of such titles, in California during the
17 Class Period.

18 46. "Settlement Administrator" means Kurzman, Carson Company of El Segundo,
19 California, or any other administrator mutually agreed upon by the Parties.

20 47. "Settlement Agreement" means this Agreement, and all of its attachments and exhibits,
21 which the Parties understand and agree sets forth all material terms and conditions of the settlement
22 between them and which is subject to Court approval. It is understood and agreed that SWS's
23 obligations for payment under this Settlement Agreement are conditioned on, among other things, the
24 occurrence of the Settlement Effective Date.

25 48. "Settlement Award" means the total gross amount due to a Participating Settlement
26 Class Member, which shall be comprised of a Class Participation Award and an Individual Expense
27 Reimbursement Payment.

1 49. “Settlement Class” means the collective group of all Class Members who do not
2 request exclusion from the Class, and thus means the collective group of all the Class Members who
3 will become bound by the Judgment if the Settlement Effective Date occurs.

4 50. “Settlement Class Member” or “Member of the Settlement Class” means any person
5 who is a member of the Settlement Class.

6 51. “Settlement Effective Date” means the date of (i) the Court’s order granting final
7 approval of the Settlement, if there are no objections to the settlement; (ii) if there are objections, then
8 upon the expiration of time for appeal of the Court’s final approval order; or (iii) if there is an appeal
9 by an objector from the Court’s final approval order, then upon the final resolution of any appeal from
10 the Court’s final approval order.

11 52. “Share Form” means the form which shall be enclosed with the Class Notice to be
12 mailed to Class Members, which shall be substantially in the form of Exhibit C attached hereto. Each
13 Share Form mailed to a Class Member will identify the number of Weeks Worked by the individual
14 based on SWS’s records and the dates of employment, will provide the weighting formula for
15 determining each Class Member’s pro rata share, and will estimate each Class Member’s pro rata share
16 of the Expense Reimbursement Payments Fund.

17 53. “SWS” means Southern Wine and Spirits of America, Inc., the defendant in the Action.

18 54. “Total Settlement Sum” means the total amount of \$3,500,000.00 that SWS will pay for
19 all purposes and recipients specified in this Settlement Agreement.

20 55. “Unknown Claims” means any Released Claims which any Plaintiff or any Settlement
21 Class Member does not know or suspect to exist in his or her favor at the time of the entry of the
22 Judgment, and which, if known by him or her, might have affected his or her settlement with and
23 release of the Released Parties, or might have affected his or her decision to request exclusion from the
24 Class or to object to this settlement. With respect to any and all Released Claims, the Parties stipulate
25 and agree that, upon the Settlement Effective Date, each of the Plaintiffs shall expressly waive, and
26 each of the Settlement Class Members shall be deemed by operation of the Judgment to have waived,
27 the provisions, rights and benefits of California Civil Code Section 1542 and any similar provision of
28 federal law or the law of any state. Section 1542 provides as follows:

1 A general release does not extend to claims which the creditor does not know or
 2 suspect to exist in his or her favor at the time of executing the release, which if
 known by him or her must have materially affected his or her settlement with the
 debtor.

3 Plaintiffs, and each of them, and each Settlement Class Member may here after discover facts
 4 in addition to or different from those which they now know or believe to be true with respected to the
 5 subject matter of the Released Claims, but Plaintiffs, and each of them, and each Settlement Class
 6 Member, upon the Settlement Effective Date, shall be deemed to have, and by operation of the
 7 Judgment shall have, fully, finally, and forever settled and released any and all Released Claims,
 8 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed
 9 or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing
 10 or coming into existence in the future, including, but not limited to, conduct which is negligent,
 11 intentional, with or without malice, or a breach of any duty, law or rule, without regard to the
 12 subsequent discovery or existence of such different or additional facts. Plaintiffs, and each of them,
 13 acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to
 14 have acknowledged, that the foregoing waiver was separately bargained for and a key element of the
 15 settlement of which this release is a part.

16 56. "Updated Address" means a mailing address that was updated by a reasonable address
 17 verification measure of the Settlement Administrator or by an updated mailing address provided by the
 18 United States Postal Service or a Class Member.

19 57. "Weeks Worked" means the number of compensable weeks a Class Member worked for
 20 SWS as a Sales Representative during the Class Period. The number of Weeks Worked by a Class
 21 Member includes holidays, vacation, and sick days, but excludes leaves of absence and suspensions.

22 **IV. TERMS OF SETTLEMENT**

23 NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings set
 24 forth herein, the Parties hereby further stipulate and agree, subject to the Court's approval, as follows:

25 58. Stipulation for Class Certification. The Action may be provisionally certified as a class
 26 action pursuant to Federal Rule of Civil Procedure 23(b)(3), for the purposes of the monetary relief
 27 provided in this Settlement Agreement. The Class shall be defined as and consist of: "All persons
 28

1 employed by Southern Wine & Spirits of America, Inc. as a union sales representative, including, but
 2 not limited to, the positions of PWS On-Sale Salesperson, PWS Off-Sale Salesperson, PWS Combo
 3 Salesperson, SWS On-Sale Salesperson, SWS Off-Sale Salesperson and SWS Combo Salesperson, and
 4 substantially similar variations of such titles, within the State of California during the period of August
 5 17, 2006 through May 31, 2012.” Plaintiffs Jovich, Tran, and Greilich and their attorneys, Goldstein,
 6 Demchak, Baller, Borgen & Dardarian and HammondLaw, may be preliminarily and conditionally
 7 appointed as Class Representatives and Class Counsel respectively.

8 59. Settlement Payments

9 59.1 *Total Settlement Sum.*

10 Subject to Court approval and the occurrence of the Settlement Effective Date, SWS, itself or
 11 through the Settlement Administrator, shall pay the Total Settlement Sum of three million five hundred
 12 thousand dollars (\$3,500,000.00), which shall fully satisfy SWS’s obligations for all payments, fees,
 13 and costs identified in this Settlement Agreement, including service awards to Class Representatives,
 14 costs of settlement administration, employees’ share of applicable payroll taxes, the Reserve Fund, and
 15 Class Counsel’s attorneys’ fees and out-of-pocket litigation expenses and costs, in the amounts and by
 16 the procedures specified in this Settlement Agreement. SWS shall separately pay the employer’s share
 17 of applicable payroll taxes owed on payments made to Plaintiffs and Participating Settlement Class
 18 Members, if any, in addition to the settlement payments specified herein.

19 59.1.1 *Class Counsel’s Costs, Expenses and Attorneys’ Fees*

20 From the Total Settlement Sum, and subject to Court approval, SWS shall pay Class Counsel’s
 21 actual litigation costs and expenses up to a maximum amount of fifty five thousand eight hundred
 22 eighty-nine dollars (\$55,889), and up to one million fifty thousand dollars (\$1,050,000), equal to thirty
 23 percent (30%) of the Total Settlement Sum for Class Counsel’s attorneys’ fees. As set forth in
 24 Paragraph 63.1 of this Settlement Agreement, Class Counsel will apply to the Court for, and SWS does
 25 not oppose, approval of payment of those amounts of costs, expenses, and attorneys’ fees.

26 59.1.2 *Costs of Settlement Administration*

27 The costs of settlement administration, currently estimated at \$19,221 (\$23,665 if a second
 28 distribution of payments to Participating Class Members becomes necessary), will also be paid from

1 the Total Settlement Sum. These costs shall not exceed \$22,500 in any event (\$27,500 if a second
2 distribution becomes necessary).

3 *59.1.3 Service Awards to Class Representatives*

4 From the Total Settlement Sum, and subject to Court approval, SWS shall pay service awards
5 of \$10,000 to each the Class Representatives. SWS does not oppose or object to the approval of
6 payment of these amounts.

7 *59.1.4 Reserve Fund*

8 The Settlement Administrator will, with Court approval, set aside from the Total Settlement
9 Sum and administer, a "Reserve Fund" in the amount of \$50,000, to be available to pay any Class
10 Members who are not initially located, or to pay additional amounts determined to be due to Class
11 Members after payments are initially made from the Net Settlement Fund. The Settlement
12 Administrator shall hold the Reserve Fund in an interest bearing account. All interest accrued shall
13 remain in the Reserve Account unless and until expended for such late or disputed payments pursuant
14 to this Settlement Agreement, and any remaining funds not so expended shall be issued to the court-
15 approved *cy pres* beneficiary(ies) as provided in Paragraph 65 below.

16 *59.1.5 Consideration to Participating Settlement Class Members.*

17 The Net Settlement Fund shall be used to pay all amounts due to Participating Settlement Class
18 Members based on their Weeks Worked according to the method of calculation and allocation of such
19 payments as specified in paragraph 64.3 below. All monies in the Net Settlement Fund shall be
20 expended for that purpose, without any reversion to SWS.

21 *59.2* Except for the Service Awards to Class Representatives, all payments to
22 Participating Settlement Class Members under this Settlement Agreement are for unpaid business
23 expenses and interest, and are therefore considered for purposes of this Settlement Agreement to be
24 non-wage and non-income items. Each Plaintiff and Participating Settlement Class Member's
25 individual settlement payment shall be treated as expense reimbursement and interest in the following
26 proportions:

27 *59.2.1* Two-thirds (2/3) of such payments shall be for reimbursement of
28 allegedly unreimbursed business expenses incurred by Class Members, and

1 59.2.2 One-third (1/3) of such payments shall be for interest on allegedly
2 unreimbursed business expenses.

3 59.3 SWS will issue appropriate tax forms and reports to Participating Settlement
4 Class Members and governmental tax authorities based on the foregoing allocations. The Parties will
5 not offer or provide any tax advice to Class Members concerning their responsibility for taxes, if any,
6 on payments they receive.

7 60. Court Approval of Notice to the Class

8 60.1 Plaintiffs shall promptly submit this Settlement Agreement to the Court together
9 with a Motion for Preliminary Approval of Settlement and Certification of Settlement Class.

10 Plaintiffs' motion shall also seek an order:

- 11 a. Preliminarily approving the settlement;
- 12 b. Approving as to form and content the proposed Class Notice;
- 13 c. Approving as to form and content the proposed Share Form and instructions;
- 14 d. Approving as to form and content the proposed Claim Form;
- 15 e. Directing the mailing of the Class Notice, Share Forms, Claim Forms, and
16 instructions by first class mail to Class Members;
- 17 f. Preliminarily certifying the Class for purposes of settlement and preliminarily
18 appointing Plaintiffs and Plaintiffs' Counsel as Class Representatives and Class Counsel of the Class;
- 19 g. Preliminarily approving settlement administration services to be provided by the
20 Settlement Administrator;
- 21 h. Preliminarily approving the proposed service awards to Plaintiffs Jovich, Tran,
22 and Greilich as Class Representatives;
- 23 i. Preliminarily approving the application for payment of reasonable attorneys'
24 fees, costs, and expenses to Class Counsel; and
- 25 j. Scheduling a fairness hearing on the question of whether the proposed
26 settlement should be finally approved as fair, reasonable, and adequate as to the members of the
27 Settlement Class.

1 60.2 Failure of the Court to enter the Preliminary Approval Order in its entirety or in
2 a substantially similar form will be grounds for the Parties to terminate the settlement and the terms of
3 this Settlement Agreement.

4 60.3 If the Court enters the Preliminary Approval Order, then at the resulting Final
5 Fairness Hearing, Plaintiffs and SWS through their counsel of record, shall address any written
6 objections from Class Members or any concerns from Class Members who attend the hearing as well
7 as any concerns of the Court, if any, and shall and hereby do, unless provided otherwise in this
8 Settlement Agreement, stipulate to final approval of this Settlement Agreement and entry of the
9 Judgment by the Court

10 61. Class Notice and Claims Procedure

11 61.1 Within ten (10) days of the Preliminary Approval Date, SWS shall provide to
12 the Settlement Administrator information in electronic format regarding all Class Members, including
13 Last Known Addresses and telephone numbers (including cellular phone numbers if SWS has such
14 information in the Class Members' personnel files), Social Security numbers, e-mail addresses, and
15 dates and weeks worked as a Sales Representative, with specification of any periods of leave of
16 absence during the Class Period, and whether each Class Member is a Current Employee Class
17 Member or Former Employee Class Member.

18 61.2 Prior to mailing the Class Notices, the Settlement Administrator will update the
19 addresses for the Class Members using the National Change of Address database and other available
20 resources deemed suitable by the Settlement Administrator. To the extent this process yields an
21 Updated Address, that Updated Address shall replace the Last Known Address and be treated as the
22 new Last Known Address for purposes of this Settlement Agreement and for subsequent mailings in
23 particular.

24 61.2.1 The Settlement Administrator shall supply Class Counsel and SWS's
25 Counsel with an updated address list for the Class Members, reflecting any corrections or updates
26 made by the Settlement Administrator in the course of administering Class Notices to the Class, and
27 the receipt of any challenges and written objection and opt out statements.

1 61.3 Unless the parties agree otherwise in writing or the Court so orders, the Class
2 Notices shall be mailed to the Last Known Address or Updated Address (if applicable) of the Class
3 Members by first class mail no later than the Notice Mailing Deadline. Attached to the Class Notices
4 will be a Share Form indicating the number of Weeks Worked for the receiving Class Member, based
5 on the information provided by SWS, and the estimated Individual Expense Reimbursement Payment
6 for the respective Class Member. In addition to the Class Notice and Share Form, each Former
7 Employee Class Member will also receive a Claim Form. Enclosed with all Class Notices, Share
8 Forms and Claim Forms (as applicable) shall be a postage-prepaid envelope, pre-printed with the
9 following address:

10 SWS Sales Representative Class Action Administrator
11 c/o [Name of Settlement Administrator]
12 [Address of Settlement Administrator]

13 61.4 The Settlement Administrator will use all appropriate tracing methods to ensure
14 that the Notice packets are received by all Class Members. Any returned envelopes from the initial
15 mailing with forwarding addresses will be used by the Settlement Administrator to locate missing
16 Class Members and re-mail the Class Notice to the correct or Updated Address.

17 61.5 In the event that the first mailing of the Class Notice to any Class Member is
18 returned without a forwarding address, the Settlement Administrator will immediately conduct a
19 standard skip trace in an effort to ascertain the current address for the particular Class Member in
20 question. If a more recent or accurate address is found by this method, the Settlement Administrator
21 will resend the Notice to the Updated Address within three (3) calendar days of identifying the new
22 address information.

23 61.6 If no new information is ascertained by means of a skip trace, or if the Class
24 Notice is returned to the Settlement Administrator after using an address obtained from a standard skip
25 trace, the Settlement Administrator will immediately perform a manual “in-depth skip trace” to locate
26 a more recent or accurate address. If an Updated Address is identified by this method, the Settlement
27 Administrator will resend the Class Notice to the Updated Address within three (3) calendar days of
28 identifying the Updated Address.

1 61.7 At least five (5) days prior to the Final Fairness Hearing, the Settlement
2 Administrator shall prepare, and Class Counsel shall provide the Court, a declaration by the Settlement
3 Administrator of due diligence and proof of mailing of the Class Notices, Share Forms, and Claim
4 Forms required to be mailed to Class Members by this Settlement Agreement, and of the delivery
5 results of the Settlement Administrator's mailings including tracing and re-mailing efforts.

6 61.8 Class Members will have the right to challenge only the number of Weeks
7 Worked as shown on the Share Form. Challenges to the number of Weeks Worked listed on Share
8 Forms shall be sent directly to the Settlement Administrator at the address indicated on the Share
9 Form. No challenge to the number of Weeks Worked will be accepted unless postmarked within forty-
10 five (45) days after the mailing of Class Notice. Additional time may be provided to a Class Member
11 for good cause and within an amount of time determined by the Settlement Administrator that will not
12 delay the distribution of settlement payments to other Class Members. The Settlement Administrator
13 will inform Class Counsel and SWS's Counsel in writing of any timely filed challenges. Challenges
14 will be resolved without hearing by the Settlement Administrator, who will make a decision based on
15 SWS's records and any documents or other information presented by the Class Member making the
16 challenge, Class Counsel or SWS. The Settlement Administrator's determination is final and binding
17 without a right of appeal.

18 61.9 Unless a Current Employee Class Member submits a valid and timely Request
19 for Exclusion (as described in Paragraph 62.1), he or she will automatically become a Participating
20 Settlement Class Member. In other words, Current Employee Class Members shall not be required to
21 take any action to receive payment from the Net Settlement Fund.

22 61.10 Former Employee Class Members shall be required to complete and submit to
23 the Settlement Administrator a Claim Form postmarked no later than the Notice Response Deadline,
24 unless otherwise ordered by the Court, to become a Participating Settlement Class Member entitled to
25 receive payment from the Net Settlement Fund. Unless a Former Employee Class Member submits a
26 valid and timely Request for Exclusion (as described in Paragraph 62.1), a Former Employee Class
27 Member who takes no action will be a Member of the Settlement Class, bound by the Judgment, and
28 will not receive any payment from the Net Settlement Fund. In the event a Former Employee Class

1 Member submits both a Request for Exclusion and a timely Claim Form, the Claim Form will be
2 honored and the Request for Exclusion will be disregarded, and the individual shall be treated as a
3 Participating Settlement Class Member. Nothing in this paragraph shall apply to the Class
4 Representatives, who shall be treated as Participating Settlement Class Members.

5 61.11 No less than thirty (30) days before the Notice Response Deadline, the
6 Settlement Administrator shall mail reminder postcards to all Former Employee Class Members who
7 have not, at that time, submitted either a Claim Form or Request for Exclusion.

8 61.12 In the event that not all Former Employee Settlement Class Members submit a
9 Claim Form, any unclaimed money remaining in the Net Settlement Fund shall be re-allocated on a
10 pro-rata basis to enhance the payments made to all Participating Settlement Class Members

11 62. Procedure for Requesting Exclusion and Objecting to the Settlement

12 62.1 Class Members who wish to opt out of this settlement shall notify the Settlement
13 Administrator in writing that they want to exclude themselves from (i.e., opt out of) the Settlement
14 Class. The written exclusion statement (“Request for Exclusion”) must include the Class Member’s
15 name, address, and last four digits of his/her Social Security number, and state, in writing, the desire to
16 be excluded. The Request for Exclusion must be postmarked no later than the Notice Response
17 Deadline, or as otherwise ordered by the Court, to be considered timely. Class Members shall be
18 permitted to rescind their Request for Exclusion in writing by submitting a rescission statement to the
19 Settlement Administrator no later than three (3) business days prior to the Final Fairness Hearing, or as
20 otherwise ordered by the Court.

21 62.2 Class Members who wish to object to this settlement must do so in writing, or in
22 any other manner ordered by the Court. Written objections must include the Class Member’s name,
23 address, and last four digits of his/her Social Security number, and state the basis of the objection. All
24 written objections must be mailed to the Settlement Administrator and postmarked no later than Notice
25 Response Deadline, or as otherwise ordered by the Court, to be considered timely. Class Members
26 shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the
27 Settlement Administrator no later than three (3) business days prior to the Final Fairness Hearing, or as
28 otherwise ordered by the Court.

1 62.3 The Settlement Administrator shall (a) date stamp all original Requests for
2 Exclusion and objections to the settlement that it receives; (b) serve copies on Class Counsel and
3 SWS's Counsel no later than five (5) business days after receipt, or immediately if received within five
4 (5) business days of the Final Fairness Hearing; and (c) file the date-stamped originals with the Clerk
5 of the Court no later than five (5) business days prior to Final Fairness Hearing or immediately if
6 received less than five (5) business days prior to the Final Fairness Hearing.

7 62.4 The Settlement Administrator shall also (a) date stamp all original rescission of
8 request for exclusions and withdrawal of objection statements it receives; (b) serve copies on Class
9 Counsel and SWS's Counsel no later than five (5) business days after receipt, or immediately if
10 received within five (5) business days of the Final Fairness Hearing; and (c) file the date-stamped
11 originals with the Clerk of the Court no later than five (5) business days prior to the Final Fairness
12 Hearing or immediately if received less than five (5) business days prior to the Final Fairness Hearing.

13 63. Motion for Final Approval and Final Fairness Hearing

14 63.1 Prior to the Final Fairness Hearing and consistent with the rules imposed by the
15 Court, Plaintiffs shall move the Court for entry of the Order of Final Approval (and associated entry of
16 Judgment). Through this motion, Plaintiffs shall advise the Court of the agreements in paragraphs
17 59.1, 59.1.1 and 59.2. Plaintiffs and Class Counsel shall be responsible for justifying the agreed upon
18 payments set forth in Paragraphs 59.1.1 and 59.1.2 of this Settlement Agreement. To the extent
19 possible the motion seeking entry of the Order of Final Approval shall be noticed for the same day as
20 the Final Fairness Hearing. The Parties shall take all reasonable efforts to secure entry of the Order of
21 Final Approval. If the Court rejects the Settlement Agreement, fails to enter the Order of Final
22 Approval, or fails to enter the Judgment, this Settlement Agreement shall be void *ab initio*, and SWS
23 shall have no obligation to make any payments under the Settlement Agreement, except for payments
24 to the Settlement Administrator for services performed up to that time.

25 63.2 Class Counsel will submit a proposed Order for Final Approval and Judgment,
26 which shall include findings and orders:

27 63.2.1 Approving the settlement, adjudging the terms thereof to be fair,
28 reasonable, and adequate, and directing that its terms and provisions be carried out;

1 63.2.2 Approving the payment of service awards to the Plaintiffs as Class
2 Representatives;

3 63.2.3 Approving Class Counsel’s application for an award of attorneys’ fees
4 and reimbursement of costs and litigation expenses; and

5 63.2.4 Providing that the Court will retain jurisdiction to oversee administration
6 and enforcement of the terms of the Settlement Agreement and the Court’s orders.

7 63.3 Following entry of the Court’s Order Granting Final Approval of Settlement, the
8 Parties will act to assure the timely execution and the fulfillment of all its provisions, including, but not
9 limited to, the following:

10 63.3.1 Should an appeal be taken from the final approval of the Settlement
11 Agreement, all Parties will support the approval order on appeal.

12 63.3.2 Class Counsel and SWS’s Counsel will assist the Settlement
13 Administrator as needed or requested in the process of identifying and locating Participating
14 Settlement Class Members entitled to payments from the Net Settlement Fund and assuring delivery of
15 such payments;

16 63.3.3 Class Counsel and SWS’s Counsel will assist the Settlement
17 Administrator as needed or requested in responding to late requests for payments from the Reserve
18 Fund and the fair administration of that Fund;

19 63.3.4 Class Counsel and SWS’s Counsel will cooperate with each other and
20 assist the Settlement Administrator as needed or requested in completing the distribution of any
21 residual amount from the Reserve Fund and/or uncashed checks, as specified below, to the designated
22 *cy pres* beneficiary(ies);

23 63.3.5 The Plaintiffs and Class Counsel will certify to the Court completion of
24 all payments required to be made by this Settlement Agreement as set forth in Paragraph 64.5 below.

25 64. Consideration to Participating Settlement Class Members

26 64.1 Only Participating Settlement Class Members are entitled to receive payment
27 under this Settlement Agreement.

28 64.2 *Timing of Payment to Participating Settlement Class Members:*

1 64.2.1 Within ten (10) days after the Final Approval Date, SWS shall transmit
2 payment of the Total Settlement Sum to the Settlement Administrator for deposit into an interest-
3 bearing account established and maintained by the Settlement Administrator.

4 64.2.2 The Settlement Administrator shall, within fifteen (15) days after the
5 Settlement Effective Date, make the final calculation of payments from the Net Settlement Fund.
6 Upon completion of its final calculation of payments, and at least five (5) days prior to the distribution
7 of payments to Participating Settlement Class Members from the Net Settlement Fund, the Settlement
8 Administrator shall provide Class Counsel and SWS's Counsel with a report listing the amount of all
9 payments to be made to each Participating Settlement Class Member from the Net Settlement Fund.

10 64.3 *Individual Settlement Awards will be calculated as follows:*

11 64.3.1 Each Participating Settlement Class Member shall receive a Class
12 Participation Award of \$250.00.

13 64.3.2 Each Participating Settlement Class Member will also receive an
14 Individual Expense Reimbursement Payment equal to his or her pro-rata share of the Expense
15 Reimbursement Payments Fund according to his or her Weeks Worked "points." A Participating
16 Settlement Class Member's Weeks Worked "points" will be calculated by applying a formula to his or
17 her Weeks Worked in each of five Expense Allowance Periods in which weeks worked in the earlier
18 periods are more heavily weighted (due to smaller expense allowances then in effect and longer
19 interest period). (See Exhibit A for the applicable Expense Allowance Periods and weighting
20 variables).

21 64.3.3 In calculating the Individual Expense Reimbursement Payments, Weeks
22 Worked by Participating Settlement Class Members shall include holiday, vacation, and sick days, but
23 exclude leaves of absence and suspensions.

24 64.3.4 Weeks Worked shall be determined by the Settlement Administrator
25 based on employment records to be provided by SWS, as may be modified by the Settlement
26 Administrator's resolution of any challenges pursuant to section 61.8.

27 64.4 The Settlement Administrator shall make settlement payments due to
28 Participating Settlement Class Members under this Agreement, as well as Service Awards to the

1 Plaintiffs by issuing one check (or more if necessary for administrative convenience) payable to the
2 each Participating Settlement Class Member, in the amount of his or her relevant Settlement Award,
3 consisting of a Class Participation Award and pro rata portion of the Expense Reimbursement
4 Payments Fund, from the account funded by SWS, less relevant withholdings. The Settlement
5 Administrator shall mail said check(s), and any necessary tax reporting forms, to each Participating
6 Settlement Class Member at his or her Last Known Address, or Updated Address if obtained.

7 64.5 Following the mailing of the payments to Participating Settlement Class
8 Members discussed in Paragraph 64.3, the Settlement Administrator shall provide a declaration of
9 payment, which Class Counsel will file with the Court and serve on SWS within thirty (30) days of
10 mailing the payments to Participating Settlement Class Members, Plaintiffs, and Class Counsel.

11 64.6 Participating Settlement Class Members who are sent payments shall have
12 ninety (90) calendar days after mailing by the Settlement Administrator to cash their settlement checks.
13 If such Participating Settlement Class Members do not cash their checks within that period, those
14 checks will become void and a stop payment will be placed on the uncashed checks. In such event,
15 those Participating Settlement Class Members will be deemed to have waived irrevocably any right in
16 or claim to a settlement payment; however, the Settlement Administrator may, in its discretion and for
17 good cause, and without appeal to or right of review by the Court, agree to make full or partial
18 payment of the amounts calculated to be due to such Participating Settlement Class Members out of the
19 Reserve Fund. All amounts remaining from voided and uncashed checks after deduction of costs,
20 including stop payment charges, shall be added to the Reserve Fund. Whether or not such
21 Participating Settlement Class Members receive any payment from the Reserve Fund, this Settlement
22 Agreement shall be binding upon them.

23 65. Distribution of Residual

24 65.1 Should there remain any residual from the Net Settlement Fund and/or the
25 Reserve Fund after all payments are made under this Settlement Agreement, for example, if any
26 settlement checks are not cashed within ninety (90) calendar days after mailing or unclaimed amounts
27 remain from the Reserve Fund after six (6) months from the Settlement Effective Date, the residual
28 amount shall be divided evenly between *cy pres* beneficiaries agreed to by the Parties.

1 65.2 The Parties agree, subject to Court approval, that the *cy pres* beneficiaries are
2 the Legal Aid Society – Employment Law Center in San Francisco and the Asian Law Caucus in San
3 Francisco.

4 65.3 Any costs associated with administering the residual (e.g., bank stop payment
5 charges, settlement administration costs associated with the Reserve Fund) or payments to the *cy pres*
6 beneficiary(ies) will be deducted from the residual before donation of the *cy pres* funds.

7 65.4 No later than six (6) months and one (1) week after the Settlement Effective
8 Date, the Claims Administrator shall pay over any residual including any residue in the Reserve Fund
9 to the *cy pres* beneficiary(ies) designated by the process described above. The Claims Administrator
10 shall provide a declaration of payment to *cy pres* beneficiary(ies), which will be filed with the Court
11 and served on Class Counsel within ten (10) days of payment of the residual to such beneficiary(ies).

12 66. Releases

13 66.1 Upon the Settlement Effective Date, Plaintiffs and each of the Settlement Class
14 Members (and only these persons) shall be deemed to have, and by operation of the Judgment shall
15 have, fully, finally, and forever released, dismissed with prejudice, relinquished and discharged all
16 Released Claims.

17 66.2 Class Representatives agree to execute a general release of all known and
18 Unknown Claims they might have against the Released Parties based on or arising from their
19 employment with SWS. Each Class Representative waives all rights and benefits afforded by
20 California Civil Code § 1542 and do so understanding the significance of that waiver. Section 1542
21 provides:

22 A general release does not extend to claims which the creditor does not know or
23 suspect to exist in his or her favor at the time of executing the release, which if
24 known by him or her must have materially affected his or her settlement with the
debtor.

25 In order to achieve a full and complete release of SWS of all claims arising from this lawsuit,
26 each Class Representative acknowledges that this Settlement Agreement is meant to include in its
27 effect all claims that were asserted in this action, including claims that each Class Representative does
28 not know or suspect to exist in his or her favor against SWS.

1 66.3 If SWS so instructs the Settlement Administrator, checks in payment of amounts
2 due to Participating Settlement Class Members may contain a brief statement of waiver of claims
3 released pursuant to this Settlement Agreement as part of the endorsement language. Class Counsel's
4 approval of the endorsement language shall be required, and shall not be unreasonably withheld.

5 67. Preliminary Timeline for Completion of Settlement

6 67.1 The preliminary schedule for notice, approval, and payment procedures carrying
7 out this settlement is below. The schedule may be modified depending on whether and when the Court
8 grants necessary approvals and orders notice to the class, and sets further hearings. In the event of
9 such modification, the Parties shall cooperate in order to complete the settlement procedures as
10 expeditiously as reasonably practicable.

11 67.1.1 Preliminary Approval Hearing before the Court on or before July 27,
12 2012, if permitted by the Court;

13 67.1.2 SWS to provide names, Social Security numbers, addresses, phone
14 numbers, e-mail addresses, and weeks worked (exclusive of leaves of absence and suspensions) of all
15 Class Members to Settlement Administrator no later than ten (10) days after Preliminary Approval;

16 67.1.3 Settlement Administrator to mail the Class Notice, Share Form, and
17 Claim Form (as applicable) by first class mail to Class Members no later than twenty (20) days after
18 Preliminary Approval;

19 67.1.4 Settlement Administrator to conduct trace/search efforts and send a
20 follow up mailing, no later than thirty (30) days after initial mailing, to individuals whose Class Notice
21 was returned as undeliverable or whose listed address is found to be inaccurate or outdated; Settlement
22 Administrator to mail reminder post cards no later than thirty (30) days before Settlement Hearing to
23 any Former Employee Class Member who has not submitted a Claim Form or Request for Exclusion.

24 67.1.5 Requests for Exclusion or objections to the Settlement must be
25 postmarked no later than sixty (60) days after the date of mailing of the Class Notice;

26 67.1.6 Claim Forms from Former Employee Class Members must be post-
27 marked no later than sixty (60) days after the date of mailing of the Class Notice.
28

1 67.1.7 Settlement Administrator to file with the Court and serve on the Parties
2 Requests for Exclusion and written objections or statements of intention to object to the Settlement
3 received from Class Members, and will also file with the Court and serve on the Parties its certification
4 of the completion and results of the Class Notice, timely submitted Claim Forms, and related
5 processes, no later than five (5) days before Final Approval Hearing, or in the case of late-received
6 Requests for Exclusion , objections or statements, immediately upon receipt thereof;

7 67.1.8 Class Counsel will file a timely motion for final approval of settlement,
8 including Class Counsel's application for award of attorneys' fees and costs before Final Approval
9 Hearing;

10 67.1.9 Final Approval Hearing before the Court will occur approximately 100
11 days after the entry of the Preliminary Approval Order, or as soon thereafter as the Court will hear the
12 Motion for Final Approval;

13 67.1.10 Payments to Plaintiffs' Counsel for litigation costs and expenses and
14 awarded attorneys' fees, and service awards to Class Representatives, will be made within five (5)
15 days of the Settlement Effective Date.

16 67.1.11 Settlement checks will be issued to Participating Settlement Class
17 Members by mail within thirty (30) days of the Settlement Effective Date.

18 68. Miscellaneous Provisions

19 68.1 *Voiding or Modifying the Settlement Agreement:* This Settlement Agreement
20 may not be changed, altered or modified, except in writing and signed by the Parties hereto, and
21 approved by the Court. This Settlement Agreement may not be discharged except by performance in
22 accordance with its terms or by a writing signed by the Parties hereto.

23 68.2 *Parties' Authority:* The signatories hereby represent that they are fully
24 authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and
25 conditions hereof.

26 68.3 *Mutual Full Cooperation:* The Parties agree to fully cooperate with each other
27 to accomplish the terms of this Settlement Agreement, including but not limited to, executing such
28 documents and taking such other action as may reasonably be necessary to implement the terms of this

1 Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including
 2 all efforts contemplated by this Settlement Agreement and any other efforts that may become
 3 necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set
 4 forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall,
 5 with the assistance and cooperation of SWS and its counsel, take all necessary steps to secure the
 6 Court's preliminary and final approval of this Settlement Agreement.

7 68.4 *No Admission of Liability or Wrongdoing; Inadmissibility of Settlement:*

8 Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or
 9 deemed an admission of liability, culpability, negligence or wrongdoing on the part of SWS. Each of
 10 the Parties hereto has entered into this Settlement Agreement with the intention to avoid further
 11 disputes and litigation with the attendant inconvenience and expenses, and by entering into this
 12 Agreement does not intend to render it, or consent to its becoming, admissible in evidence in any other
 13 proceeding. Notwithstanding the preceding sentence, this Settlement Agreement shall be admissible in
 14 any action or proceeding to approve, interpret or enforce this Settlement Agreement. The Parties agree
 15 that this paragraph is not intended to limit in any way any protections afforded by Federal Rules of
 16 Evidence 408, 501 or any similar, applicable federal, state or local statute or rule regarding
 17 admissibility of this Settlement Agreement.

18 68.5 *Notices:* Unless otherwise specifically provided herein, all notices, demands or
 19 other communications given hereunder shall be in writing and shall be deemed to have been duly given
 20 as of the third business day after mailing by United States registered or certified mail, return receipt
 21 requested, addressed as follows:

22 To Class Counsel:

23 Morris J. Baller
 24 James Kan
 25 GOLDSTEIN DEMCHAK BALLER BORGAN & DARDARIAN
 26 300 Lakeside Dr., Ste. 1000
 27 Oakland, CA 94612
 28 (510) 763-9800
 (510) 835-1417 (Fax)
 mballer@gdblegal.com
 jkan@gdblegal.com

1 To SWS:

2 Keith R. Thorell
3 Lauren F. Hager
4 KORSHAK, KRACOFF, KONG & SUGANO, LLP
5 1640 S. Sepulveda Blvd., Suite 520
6 Los Angeles, CA 90025
7 (310) 996-2340
8 (310) 996-2334 (Fax)
9 keith@kkks.com
10 laurenH@kkks.com

11 If the identity of the person(s) to be notified for any party change or their address changes, that
12 party shall notify all other Parties of said change in writing.

13 68.6 *Captions and Interpretations:* Paragraph titles or captions contained herein are
14 inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe
15 the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement
16 Agreement is contractual and not merely a recital. The Parties hereto agree that the terms and
17 conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations
18 between the Parties supervised by an experienced employment law mediator and that this Settlement
19 Agreement shall not be construed in favor of or against any Party by reason of the extent to which any
20 Party or his, her or its counsel participated in the drafting of this Settlement Agreement.

21 68.7 *Integration Clause:* This Settlement Agreement contains the entire agreement
22 between the Parties relating to the settlement and transaction contemplated hereby, and all prior or
23 contemporaneous agreements, understandings, representations, and statements, whether oral or written
24 and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be
25 waived except in writing.

26 68.8 *No Prior Assignments:* This Settlement Agreement shall be binding upon and
27 inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
28 and successors. The Parties hereto 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 except as set forth herein.

1 68.9 *Settlement Class Member Signatories*: It is agreed that because the members of
2 the Settlement Class are so numerous, it is impossible or impractical to have each member of the
3 Settlement Class execute this Settlement Agreement. The Class Notice will advise all Class Members
4 of the binding nature of the release and the Court’s judgment, upon its entry, shall have the same force
5 and effect as if this Settlement Agreement were executed by each Member of the Settlement Class.

6 68.10 *Counterparts*: This Settlement Agreement may be executed in counterparts with
7 signatures transmitted by facsimile or as an electronic image of the original signature. When each
8 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
9 original, and, when taken together with other signed counterparts, shall constitute one Settlement
10 Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall
11 have the same force and effect as the original signature, if and only if it is transmitted from counsel for
12 one party to the other. Such transmissions shall be interpreted as verification by the transmitting
13 counsel that the signature is genuine and that the party signing has authorized and reviewed the
14 agreement.

15 68.11 *Jurisdiction and Venue*: The United States District Court for the Northern
16 District of California has jurisdiction over the Parties and the subject matter of this action. Subject to
17 the limitations provided herein, this Court may retain continuing jurisdiction over the terms and
18 conditions of this Settlement Agreement, until all payments and obligations provided for herein have
19 been fully executed.

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1 Dated: July 5th, 2012

By: Gene Jovich
Gene Jovich
Plaintiff

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3 Dated: _____, 2012

By: _____
Hung Tran
Plaintiff

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6 Dated: _____, 2012

By: _____
Leonard Greilich
Plaintiff

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8 Dated: _____, 2012

9 GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

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11 By: _____
MORRIS J. BALLER
Attorney for Plaintiffs

12
13 Dated: _____, 2012

HAMMONDLAW, PC

14
15 By: _____
JULIAN HAMMOND
Attorney for Plaintiffs

16 Dated: _____, 2012

17 SOUTHERN WINE AND SPIRITS OF AMERICA, INC..

18 By: _____
NAME/TITLE

19 Dated: _____, 2012

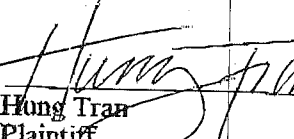
20 KORSHAK, KRACOFF, KONG & SUGANO, LLP

21
22 By: _____
KEITH R. THORELL
Attorneys for Defendant, SOUTHERN WINE AND
23 SPIRITS OF AMERICA, INC.

Dated: _____, 2012

By: _____
Gene Jovich
Plaintiff

Dated: 7-6, 2012

By: 
Hung Tran
Plaintiff

Dated: _____, 2012

By: _____
Leonard Greilich
Plaintiff

Dated: _____, 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

By: _____
MORRIS J. BALLER
Attorney for Plaintiffs

Dated: _____, 2012

HAMMONDLAW, PC

By: _____
JULIAN HAMMOND
Attorney for Plaintiffs

Dated: _____, 2012

SOUTHERN WINE AND SPIRITS OF AMERICA, INC..

By: _____
NAME/TITLE

Dated: _____, 2012

KORSHAK, KRACOFF, KONG & SUGANO, LLP

By: _____
KEITH R. THORELL
Attorneys for Defendant, SOUTHERN WINE AND
SPIRITS OF AMERICA, INC.

18 conditions of this Settlement Agreement, until all payments and obligations
19 provided for herein have
20 been fully executed.

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JOINT STIPULATION AND CLASS ACTION SETTLEMENT AGREEMENT - CASE NO.: CV 10-04405 JSW

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Page 28

1 Dated: _____, 2012

By: _____
Gene Jovich
Plaintiff

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3 Dated: _____, 2012

By: _____
Hung Tran
Plaintiff

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6 Dated: July 6, 2012

By: Leonard Greilich
Leonard Greilich
Plaintiff

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8 Dated: _____, 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

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By: _____
MORRIS J. BALLER
Attorney for Plaintiffs

HAMMONDLAW, PC

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Dated: _____, 2012

By: _____
Gene Jovich
Plaintiff

Dated: _____, 2012

By: _____
Hung Tran
Plaintiff

Dated: _____, 2012

By: _____
Leonard Greilich
Plaintiff

Dated: 7/6, 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGAN &
DARDARIAN

By: Morris J. Baller
MORRIS J. BALLER
Attorney for Plaintiffs

Dated: July, 6, 2012

HAMMONDLAW, PC

By: [Signature]
JULIAN HAMMOND
Attorney for Plaintiffs

Dated: _____, 2012

SOUTHERN WINE AND SPIRITS OF AMERICA, INC..

By: _____
NAME/TITLE

Dated: _____, 2012

KORSHAK, KRACOFF, KONG & SUGANO, LLP

By: _____
KEITH R. THORELL
Attorneys for Defendant, SOUTHERN WINE AND
SPIRITS OF AMERICA, INC.

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Dated: _____, 2012

By: _____
Gene Jovich
Plaintiff

Dated: _____, 2012

By: _____
Hung Tran
Plaintiff

Dated: _____, 2012


By: _____
Leonard Greilich
Plaintiff

Dated: _____, 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

By: _____
MORRIS J. BALLER
Attorney for Plaintiffs

Dated: July, 6, 2012

HAMMONDLAW, PC

By: _____
JULIAN HAMMOND
Attorney for Plaintiffs

Dated: _____, 2012

SOUTHERN WINE AND SPIRITS OF AMERICA, INC..

By: _____
NAME/TITLE

Dated: _____, 2012

KORSHAK, KRACOFF, KONG & SUGANO, LLP

By: _____
KEITH R. THORELL
Attorneys for Defendant, SOUTHERN WINE AND
SPIRITS OF AMERICA, INC.

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Dated: _____, 2012

By: _____
Gene Jovich
Plaintiff

Dated: _____, 2012

By: _____
Hung Tran
Plaintiff

Dated: _____, 2012

By: _____
Leonard Greilich
Plaintiff

Dated: _____, 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

By: _____
MORRIS J. BALLER
Attorney for Plaintiffs


HAMMONDLAW, PC

Dated: _____, 2012

By: _____
JULIAN HAMMOND
Attorney for Plaintiffs

Dated: 07/06, 2012

SOUTHERN WINE AND SPIRITS OF AMERICA, INC..

By: 
NAME/TITLE Lee F. ANGER CVP, Secy, COO

Dated: _____, 2012

KORSHAK, KRACOFF, KONG & SUGANO, LLP

By: _____
KEITH R. THORELL
Attorneys for Defendant, SOUTHERN WINE AND
SPIRITS OF AMERICA, INC.

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Dated: _____, 2012

By: _____
Gene Jovich
Plaintiff

Dated: _____, 2012

By: _____
Hung Tran
Plaintiff

Dated: _____, 2012

By: _____
Leonard Greilich
Plaintiff

Dated: _____, 2012

GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

By: _____
MORRIS J. BALLER
Attorney for Plaintiffs

Dated: _____, 2012

HAMMONDLAW, PC

By: _____
JULIAN HAMMOND
Attorney for Plaintiffs

Dated: _____, 2012

SOUTHERN WINE AND SPIRITS OF AMERICA, INC..

By: _____
NAME/TITLE

Dated: July 6, 2012

KORSHAK, KRACOFF, KONG & SUGANO, LLP


By: 
KEITH R. THORELL
Attorneys for Defendant, SOUTHERN WINE AND
SPIRITS OF AMERICA, INC.

EXHIBIT A

GENE JOVICH ET AL. V. SOUTHERN WINE & SPIRITS –PROPOSED
ALLOCATION PLAN

A. All Current Employee Class Members who do not opt out and all Former Employee Class Members who submit a claim form will receive Class Participation Award of \$250 each. (Total of these payments = approx. \$ 209,500 (838 x \$250).

B. Participating Class Members will also receive an Individual Expense Reimbursement Payment based on a pro-rata allocation based on Weeks Worked as Sales Representatives, with Weeks Worked weighted by period, i.e. more heavily weighted for weeks worked in earlier portions of Class Period (due to smaller expense allowances then in effect and longer interest period). The Individual Expense Reimbursement Payments will be calculated using a formula based on variable numbers of points for Weeks Worked in different periods.

C. Method of Calculating Expense Reimbursement Awards

1. Determine amount available for distribution to Class Members as Individual Expense Reimbursement Payments (“Expense Reimbursement Payments Fund”)

[Illustrative/approximate calculation of Expense Reimbursement Payments Fund:

a.	Gross settlement amount -	\$3,500,000
b.	Less lit. costs -	60,000
c.	Less adm.costs -	25,000
d.	Less attorneys’ fees (30%) –	1,050,000
e.	Less 3 Pls’ awards -	30,000
f.	Less Reserve Fund -	50,000
g.	Class Participation Awards -	209,500
h.	Exp. Reimb. Payment Fd -	\$2,075,500]

2. Calculate Participating Class Members’ Individual Expense Reimbursement Payments based on weeks worked (excluding LOA periods) during Class Period.

a. Determine Weeks Worked by Participating Class Members in each portion of Class Period.

- i. Portions of Class Period: (1) 8/17/06-5/31/08; (2) 6/1/08-5/31/09; (3) 6/1/09-5/31/10; (4) 6/1/10-5/31/11; (5) 6/1/11-5/31/12.
- ii. Weeks Worked includes holiday, vacation, and sick days, but does not include extended leaves of absence.
- iii. SWS to provide dates of employment and leave to Settlement Administrator for use in calculating Weeks Worked.

- iv. Class Members may challenge calculation of Weeks Worked and Settlement Administrator will make final determinations of Weeks Worked in each portion of Class Period after resolving challenges.

 - b. Weight weeks worked in different periods using point system:
 - i.. Weeks worked 8/17/06 – 5/31/08 = 4 points each
 - ii. Weeks worked 6/1/08-5/31/09 = 3 points each
 - iii. Weeks worked 6/1/09-5/31/10 = 2 points each
 - iv. Weeks worked 6/1/10-5/31/11 = 1 point each
 - v. Weeks worked 6/1/11-5/31/12 = 1/2 point each

 - c. Determine number of points for Weeks Worked for each Participating Class Member.
 - d. Add Weeks Worked Points for all Participating Class Members
 - e. Calculate each Participating Class Member's pro-rata (percentage) share of all Weeks Worked Points.
 - f. Multiply each Participating Class Member's pro-rata share of Weeks Worked Points times the amount of the Expense Reimbursement Payments Fund. This product is the Participating Class Member's Expense Reimbursement Payment.
- D. Amount to be paid to each Participating Class Member: \$250 + Individual Expense Reimbursement Payment

EXHIBIT B

Gene Jovich, et al. v. Southern Wine & Spirits of America, Inc., Case No. CV10-04405 JSW

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

If you were employed by Southern Wine & Spirits of America, Inc. as a union Sales Representative, as defined under heading 1 below, in the State of California at any time during the period of August 17, 2006 through May 31, 2012, you could receive a payment from a proposed class action settlement.

This Notice was authorized by the Court. This is not a solicitation from a lawyer.

You are not being sued. Read this Notice carefully, your legal rights are affected whether you act or not.

- A settlement has been reached between three former Sales Representatives, plaintiffs Gene Jovich, Hung Tran, and Leonard Greulich (“Plaintiffs”), individually and on behalf of the Class, and defendant Southern Wine & Spirits of America, Inc. (“SWS”).
- The settlement resolves a class action lawsuit alleging SWS failed to reimburse Sales Representatives for business expenses incurred while they carried out their daily sales duties while away from office locations. SWS strongly denies all the claims and contentions alleged in the lawsuit and maintains it has fully complied with the law.
- The parties have reached a settlement to avoid the costs and risks of litigation. The Settlement provides cash payments to Participating Settlement Class Members based on the number of Weeks Worked for SWS as a Sales Representative in California during the Class Period as described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM (IF REQUIRED)	<p><u>Former SWS Employees:</u> If as of <u>May 31, 2012</u> you were not employed by SWS in any position, the only way to receive a cash payment is to submit a valid and timely Claim Form. (<i>See enclosed Claim Form and Instructions</i>).</p> <p><u>Current SWS Employees:</u> If as of <u>May 31, 2012</u> you were employed by SWS as Sales Representative or in any other position, you do not need to do anything to participate in the Settlement. If you do nothing, you will receive a cash payment automatically if the Court approves the proposed Settlement.</p>
REQUEST EXCLUSION FROM THE SETTLEMENT	<p>If you wish to be excluded from the settlement, you must submit a written Request for Exclusion according to the instructions contained in this Notice. If you submit a Request for Exclusion, you will not be bound by the Settlement and you will not receive any cash payment.</p>

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	<p>Former SWS Employees: If you were not employed by SWS in any position as of May 31, 2012 and you do nothing, you will not receive a cash payment, and you will lose your right to bring or participate in any similar action against SWS.</p> <p>Current SWS Employees: If you were employed by SWS in any position as of May 31, 2012 and do nothing you will receive a cash payment based on the number of Weeks Worked identified in the enclosed Share Form and will give up the right to bring or participate in any similar action that may be filed against SWS.</p>
OBJECT	Object and tell the Court why you don't like the settlement. If the Court approves the settlement despite your objection, you will still be bound by the settlement.

- **Your options are more fully explained in this notice below. The deadline to submit a claim, submit an objection or request exclusion is [60 days from date of mailing].**

1. Why did I receive this notice?

The Plaintiffs and SWS have entered into a Joint Stipulation and Class Action Settlement Agreement ("Settlement Agreement") that will, if finally approved by the Court, fully resolve this case. The Settlement Agreement sets forth the details of the settlement. You may obtain a copy of the Settlement Agreement from either the Settlement Administrator or Class Counsel. (Details concerning where to get additional information, including a copy of the Agreement, are provided at the end of this Notice.) The proposed Settlement Agreement has been submitted to the Court, and has been preliminarily approved for settlement purposes only. The Court also appointed the law firms of Goldstein Demchak Baller Borgen & Dardarian and HammondLaw as Class Counsel to represent you and the Settlement Class.

SWS's records show that you are a Member of the Class preliminarily approved by the Court, which is defined as follows:

All persons employed by Southern Wine & Spirits of America, Inc. as a union sales representative, including, but not limited to, the positions of PWS On-Sale Salesperson, PWS Off-Sale Salesperson, PWS Combo Salesperson, SWS On-Sale Salesperson, SWS Off-Sale Salesperson and SWS Combo Salesperson, and substantially similar variations of such titles, within the State of California during the period of August 17, 2006 through May 31, 2012 ("Sales Representatives").

As a Class Member, you may be entitled to share in the funds to be made available for settlement of this class action. You are not being sued and you will not be individually responsible for any of the attorneys' fees or costs of the litigation as the settlement requires those amounts to be paid from the Total Settlement Sum paid by SWS. However, your rights will be affected by the Settlement Agreement described in this Notice whether you act or not. This Notice explains the lawsuit, the settlement and your legal rights.

The Court must finally approve the terms of the settlement described below as fair and reasonable to the Settlement Class, before it will take effect. This process will take approximately four (4) months. If approved, the settlement will affect all Class Members who do not exclude themselves from the

Settlement Class. An Administrator that has been appointed by the Court will make all approved settlement payments after the Court orders them. Those settlement payments are described in this Notice.

2. What is the case about?

On August 17, 2010, Hung Tran, a former Sales Representative, filed a class action in the Superior Court of California, County of Alameda. SWS removed the case to Federal Court, which is now handling the settlement procedures. The Plaintiff, individually and on behalf of all other Sales Representatives, alleged that they were not fully reimbursed for day-to-day business expenses that they incurred while working for SWS, including vehicle usage costs (i.e., mileage) and cell phone use in violation of the California Labor Code, and that SWS engaged in unfair business practices in violation of Business & Professions Code §§ 17200 *et seq.* Later in the case, two other Plaintiffs – Gene Jovich and Leonard Greulich – joined in the lawsuit. SWS denies all the claims and contentions alleged in the lawsuit and maintains it has fully complied with the law. The Court has not ruled on whether SWS violated the law as Plaintiffs allege, but the Plaintiffs and SWS have agreed on the settlement terms described below.

3. What are the settlement terms and how much can I expect to receive if I participate?

a. Overall summary of settlement terms

SWS will pay Three Million Five Hundred Thousand Dollars (\$3,500,000) to settle this case (the “Total Settlement Sum”). From that amount, payments will be made to Class Counsel for attorneys’ fees and costs, to the Settlement Administrator for administration costs, to the Named Plaintiffs for their representation of the Class and to a Reserve Fund (of \$50,000) established to provide payments to certain Class Members who, through no fault of their own, cannot be located or fail to respond in a timely manner. The amounts of these various payments are described in this Notice below. After deduction of these amounts, the remainder – the “Net Settlement Fund” – of approximately \$2,285,000, will be distributed to Participating Settlement Class Members. The maximum dollar amount that an individual Class Member – one who worked as a Sales Representative throughout the entire Class Period - can receive if he or she participates in the Settlement, assuming 100% participation, is estimated to be \$4,500. Assuming 100% participation, the average amount that each Participating Settlement Class Member will receive is estimated to be \$2,625.

Your individual Settlement Award will be based on your status as a Participating Settlement Class Member and the number of compensable weeks you worked as a Sales Representative for SWS during the Class Period (“Weeks Worked”), as a pro-rata percentage of the total weeks worked by all SWS Sales Representatives during the Class Period. Payment amounts for Weeks Worked will be weighted by period, i.e. more heavily weighted for Weeks Worked in earlier portions of the Class Period due to the smaller expense allowances in effect then and the longer period for accrual of interest on the allegedly unreimbursed expenses incurred then.

b. Calculation of individual class member payments

The following formula will be used to calculate your individual Settlement Award:

- (1) For participating in the settlement, you will receive a \$250.00 Class Participation Award.
- (2) You will also receive an Individual Expense Reimbursement Payment from the Expense Reimbursement Payments Fund, which is the Net Settlement Fund less all paid Class Participation Awards.

- i. You will earn points for the weeks you worked during certain parts of the Class Period, including holiday, vacation, and sick days, but excluding leaves of absence and suspensions.
 - 1. Weeks worked during August 17, 2006 to May 31, 2008 = 4 points each;
 - 2. Weeks worked during June 1, 2008 to May 31, 2009 = 3 points each;
 - 3. Weeks worked during June 1, 2009 to May 31, 2010 = 2 points each;
 - 4. Weeks worked during June 1, 2010 to May 31, 2011 = 1 point each;
 - 5. Weeks worked during June 1, 2011 to May 31, 2012 = ½ point each.
 - ii. Your Weeks Worked Points will be totaled up and divided by the total Weeks Worked Points of the entire Participating Settlement Class. The resulting fraction or percentage is your pro-rata share of the Expense Reimbursement Payments Fund of, assuming 100% participation, approximately \$2,075,500.
 - iii. Your Individual Expense Reimbursement Payment will be calculated by multiplying your pro-rata share by the amount of the Expense Reimbursement Payments Fund.
- (3) Your total individual Settlement Award is the sum of your \$250 Class Participation Award and your Individual Expense Reimbursement Payment.

c. Who will receive settlement payments?

Any Class Member who was employed by SWS in any position as of May 31, 2012 (“Current Employee Class Member”) will automatically receive a settlement payment unless he or she submits a valid and timely Request for Exclusion. Any Class Member who was not employed by SWS in any position as of May 31, 2012 (“Former Employee Class Member”) will receive a settlement payment only if he or she submits a valid and timely Claim Form. Collectively, all these individuals shall be referred to as “Participating Settlement Class Members.”

d. How much can I expect to receive?

The enclosed Estimated Payment Form (“Share Form”) lists the amount you can expect to receive if you participate in the settlement. This sum is based on SWS’s records of your Weeks Worked as a Sales Representative during the Class Period. You have a right to challenge your Weeks Worked information by following the instructions on the Share Form. All challenges must be submitted by [45 days after initial mailing], 2012. All Weeks Worked disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator’s decision will be final and binding.

The estimated payment amount may be reduced or increased, however, based upon the information contained in the Share Form, the number of Claim Forms returned, challenges to Weeks Worked, decisions of the Settlement Administrator regarding such challenges, the number of Participating Settlement Class Members, the number of Request for Exclusion submitted, whether additional class members are identified or come forward, the potential reallocation of some of the unclaimed funds to Participating Settlement Class Members and the terms of the Court’s final approval order.

(1) Applicable Tax Withholding and Responsibility for Taxes

Settlement Awards to Participating Settlement Class Members are allocated for tax purposes as follows: (1) 2/3 of each payment will be considered as unreimbursed business expenses; and (2) 1/3 of the payment will be treated as interest. In accordance with applicable tax laws, required tax withholdings will

be taken out of from each Participating Settlement Class Members' payment and remitted to the appropriate taxing authorities. SWS will pay the employer's share of employment-related taxes as required by applicable law, separately from the Settlement Fund. Participating Settlement Class Members will be responsible for the tax consequences of all payments received by them, for filing returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. The Parties to the case cannot provide and will not provide any advice regarding tax obligations. You should seek tax advice as to any amounts you receive pursuant to the Settlement from your own tax advisor.

(2) Unclaimed Amounts/Uncashed Checks

The Net Settlement Fund shall be distributed to all Participating Settlement Class Members. Any amounts remaining that are not claimed by Former Employee Class Members will be redistributed on a pro-rata basis to all Participating Settlement Class Members. Therefore, the amount you receive may be more than the estimated amount in the Share Form.

All settlement checks that are not cashed or deposited within ninety (90) days of issuance will be void. Any uncashed check funds then will be added to the Reserve Fund. Monies remaining in the Reserve Fund after six (6) months will be donated to worthy non-profit organizations proposed by the Parties and approved by the Court. No unclaimed funds or unclaimed check amounts will be returned to SWS, which will pay out the entire \$3.5 million Settlement Fund.

e. Additional payments to the Named Plaintiffs

The Court has also preliminarily approved a Service Award payment of \$10,000 to each of the three Named Plaintiffs. The service awards will be paid from the Total Settlement Sum, which will slightly reduce any payment made to should you choose to become a Participating Settlement Class Member. This service award is sought to compensate the Named Plaintiffs for their risk incurred and their time and efforts in assisting with the prosecution of the Action on behalf of the Class Members and in return for executing a General Release of all Claims against the Released Parties, which is broader than the release applicable to the Settlement Class Members who are not Named Plaintiffs.

f. Attorneys' fees and costs for the Class Counsel

You do not need to pay individually any portion of Class Counsel's attorneys' fees and costs. All payments for those attorneys' fees and costs will be deducted from the Total Settlement Sum, which will reduce any payment made to you should you choose to become a Participating Settlement Class Member. Class Counsel will apply to the Court for final approval of their attorneys' fees and costs. The attorneys for the Class will ask for reimbursement of their costs of up to \$55,889.00 actually incurred in litigating this case and for fees of up to 30% of the Settlement Amount (*i.e.*, up to \$1,050,000). The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable, and will be paid from the Total Settlement Sum provided by SWS.

g. Settlement Administration Costs

Costs incurred by the Settlement Administrator in connection with providing Notice to the Class, processing and receiving Claim Forms, receiving and determining challenges to estimated settlement payment amounts, receiving and forwarding to the Court and the Parties Requests for Exclusion and objection letters received, if any, and calculating and distributing payments due to Participating Settlement Class Members and others entitled to settlement payment under the terms of the Settlement Agreement as approved by the Court, will be paid from the Total Settlement Sum up to a maximum of

§[insert not to exceed quote]. The Settlement Administrator's name and contact information is provided below in this Notice.

h. All Payments Subject to Court Approval

All of the payments listed above will be made if and only if the Court grants final approval of the Settlement Agreement based on its finding that the settlement is reasonable, fair, and adequate for the Class. The amounts of those payments may be adjusted by the Court.

4. What Are My Options?

You may participate in the settlement, exclude yourself from it or do nothing.

If you want to participate in the settlement and you are a Current Employee Class Member (i.e. employed by SWS in any position as of May 31, 2012), you do not have to do anything. You will receive your Settlement Award automatically if the Settlement is approved by the Court. If you are a Former Employee Class Member (i.e. as on May 31, 2012 you were not employed by SWS in any position), and you wish to participate in the settlement and receive a Settlement Award, you must submit the enclosed Claim Form no later than [NOTICE RESPONSE DEADLINE DATE]. You also have a right to object to the settlement if you submit a Claim Form. Finally, you have the right to exclude yourself from the Settlement Class. The option you choose affects whether you receive a settlement payment and whether you give up certain rights. These options are also summarized in the chart on the first page of this Notice.

a. What do I have to do in order to receive a settlement payment?

Current Employee Class Members

If you were employed by SWS as a Sales Representative or in any other position as of May 31, 2012, and wish to receive a Settlement Award, you do not need to take any action. You will automatically receive your settlement payment when and if the Court gives final approval to the Settlement Agreement.

Former Employee Class Members

If, as of May 31, 2012, you were not employed by SWS in any position, and you wish to receive payment Settlement Award, you must submit a Claim Form on or before [60 days after mailing], 2012. Former Employee Class Members who do nothing (i.e., do not submit a timely Claim Form) will not receive any Settlement Award and any legal claims you may have that are covered by the Settlement will be permanently given up.

If you are listed as a Former Employee Class Member in SWS's records, the required Claim Form is attached to this Notice. You must complete, sign and date the Claim Form and return it, by First-Class U.S. Mail, to:

SWS Sales Representative Settlement Administrator
c/o [insert claims administrator]
[Address]

The Claim Form must be postmarked no later than [60 days after mailing], 2012. If your Claim Form is not postmarked by [60 days after mailing], 2012, you will not receive any payment but you will be bound by the Release and all other terms of the Settlement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your Claim Form. If you lose, misplace or need another Claim Form, you should contact the Claims Administrator immediately and request that another Claim

Form be sent to you. **You are responsible for maintaining a copy of your fully completed Claim Form and record of proof of mailing**, in case proof of mailing is needed.

b. Can I request to be excluded from the Settlement?

You, or any Class Member, can, if you wish, exclude yourself from the Settlement. If you do so, you will not receive a Settlement Award and will not be subject to the terms of the Settlement Agreement.

You may exclude yourself from the proposed settlement by taking the following steps:

- (1) You must mail a written statement containing your name, address, telephone number, and the last four digits of your Social Security number and state your desire to be excluded from the Settlement Class to the Settlement Administrator, whose name and address is listed below.
- (2) The request must be postmarked by [60 days after date of mailing of Notice].

You cannot both exclude yourself and obtain a Settlement Award, and you cannot both exclude yourself and object to the settlement. If you submit a Request for Exclusion (as described above) and submit a Claim Form, your Claim Form will be honored, your Request for Exclusion will be disregarded, and you will be treated as a Participating Settlement Class Member. If you submit a Request for Exclusion and submit an objection to the settlement, your objection will not be considered.

c. How do I object to the settlement?

If you are satisfied with the proposed settlement, you do not need to express your views or appear at the hearing at which the Court will consider final approval of the settlement. However, if you wish to object to the proposed settlement you must take the steps below. Your failure to do so will be deemed a waiver of your objections and you will not be permitted to appear at the hearing at which the Court will consider whether to grant final approval:

- (1) You must mail a written statement to the Settlement Administrator listed below. The Settlement Administrator will send a copy of your objection to all Parties involved in the case and to the Court.
- (2) The written statement **MUST** include: (i) a statement advising if you plan to address the Court at the hearing; (ii) a statement of your objections; (iii) any other papers which you propose to submit to the Court, including any legal briefs or memoranda; and (iv) identify your name, address, telephone number, and the last four digits of your Social Security number. You may appear at the final approval hearing personally, or through your own counsel, paid for at your own expense.
- (3) The written statement must be postmarked by [60 days after mailing of Notice].

If you have satisfied the requirements set forth above, you have the right to address the Court at the hearing scheduled for [INSERT DATE AND TIME OF THE HEARING] before the Honorable Jeffrey S. White, United States District Court Judge, Northern District, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. For your objections to be considered, you cannot also submit a Request for Exclusion.

5. What Will I Give Up if I Participate in the Settlement?

The settlement relates to the time that you worked as a Sales Representative for SWS during the Class Period, and to any and all claims related to allegedly unreimbursed business expenses (the “Released Claims”). If the proposed Settlement is approved, all Class Members who have not requested exclusion (“Settlement Class Members”) will be considered to have released SWS and all persons or parties acting for it (the “Released Parties”) from the “Released Claims” and will be permanently barred from suing or otherwise making a claim against any of the Released Parties regarding the Released Claims. The exact language of the Release, including the legal definition of Released Claims and Released Parties, is included in the Settlement Agreement.

Class Members who do not exclude themselves from the settlement will be considered to have accepted the release and to have waived any of the Released Claims against the Released Parties.

6. Will I be subject to discipline based on whether I participate in the settlement?

No. California law protects individuals and employees from retaliation based on their decision to participate or not participate in a class action settlement. Your decision to participate, not participate, or object in this Settlement will not impact your employment with SWS or SWS’s treatment of you as a former employee. **SWS is prohibited by law from retaliating in any way based on your decision to participate or not participate in the settlement.**

7. Where can I get additional information?

This Notice only summarizes this lawsuit, the settlement, and related matters. For more information, you may find and review the Settlement Agreement and this Notice which are posted on the websites of the Settlement Administrator, [WEB ADDRESS], and of the Class Counsel firm Goldstein, Demchak, Baller, Borgen & Dardarian, [www.gdblegal.com]. You may also inspect the Court files at the Clerk of the Court, United States District Court Judge, Northern District, San Francisco Courthouse, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, from 10:00 a.m. to 4:00 p.m., Monday through Friday, excluding any holidays or other days the Court may be closed.

If you have questions about the settlement, you may also contact Class Counsel as follows:

**GOLDSTEIN, DEMCHAK, BALLER,
BORGEN & DARDARIAN**

Morris J. Baller, Esq.
James Kan, Esq.
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Telephone: (510) 763-9800
Facsimile: (510) 835-1417
mballer@gdblegal.com
jkan@gdblegal.com

HAMMONDLAW LLP

Julian Hammond, Esq.
1180 South Beverly Drive, Suite 601
Los Angeles, California 90035
Telephone: (310) 601-6766
Facsimile: (310) 295-2385
Hammond.julian@gmail.com

You may also contact the Settlement Administrator, whose name, address, telephone, and email information is:

SWS Sales Representative Settlement Administrator

c/o [insert name]

[Address]

[email address]

Toll free telephone number: (xxx) xxx-xxxx

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE OFFICE OF THE CLERK (OTHER THAN TO INSPECT THE COURT FILES) FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. THEY CANNOT ANSWER ANY QUESTIONS ABOUT THE CASE OR THE SETTLEMENT.

EXHIBIT C

**ESTIMATED SHARE FORM and CHALLENGE INSTRUCTIONS for
CURRENT EMPLOYEE CLASS MEMBERS**

*For Class Members Employed by Southern Wine & Spirits of America, Inc. ("SWS")
as of May 31, 2012*

GENE JOVICH, ET AL. V. SOUTHERN WINE & SPIRITS OF AMERICA, INC., CASE
NO. CV10-04405 JSW, IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
CALIFORNIA

Your estimated share of the settlement in this case is \$XXXXX. This estimate is based on your dates of employment as a union Sales Representative between August 17, 2006 and May 31, 2012, excluding leaves of absence and suspensions, as listed on page 2 of this Form.

If you accept your dates of employment, you do not need to do anything to receive your share of the settlement (unless you need to update or correct your mailing address).

However, if you wish to challenge the dates of employment listed on page 2, carefully follow the instructions on this form.

TO CHALLENGE YOUR LISTED DATES OF EMPLOYMENT AS A UNION SALES REPRESENTATIVE DURING THE CLASS PERIOD, **THIS FORM MUST BE SIGNED AND POSTMARKED OR FAXED NOT LATER THAN [45 DAYS AFTER MAILING].**

<p>MAIL TO: CLAIMS ADMINISTRATOR c/o KURZMAN CARSON CONSULTANTS [INSERT ADDRESS]</p>

Important:

1. You do NOT have to submit this form if you believe the dates of employment listed below are accurate.
2. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment.
3. If you change your mailing address, please send your new mailing address to the Administrator. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your settlement payment.

EMPLOYMENT DATES AND CHALLENGE INFORMATION

<<Name>>

<<Address>>

<<City>>, <<State> <Zip>>

(____) _____ -- _____
Home Telephone Number

Your Weeks Worked

SWS' payroll records show that during the Class Period of August 17, 2006 through May 31, 2012, you held the position of union Sales Representative in California in the following time period(s):	During this time, you were on a leave of absence for ____ days during the following time period(s):
<<Dates>>	<<Dates>>

Your total number of points for Weeks Worked is: <<points>>

Your pro-rata share of the Expense Reimbursement Payments Fund (as defined in the accompanying Notice) is: <<____%>>

The Expense Reimbursement Payments Fund is current estimated to be: <<\$____>>

Your Estimated Payment

Based on the total number of points for Weeks Worked, your total Settlement Award is currently estimated at \$<<_____>>. This consists of a lump sum of \$250.00 as a Class Participation Award plus your pro-rata share of the Expense Reimbursement Payments Fund, which is currently estimated to be \$<<_____>>. This amount may increase or decrease depending on factors such as, but not limited to, the outcome of any Class Member challenges to their dates of employment and the number of opt outs, if any. You will receive a Settlement Award provided you do not submit a Request for Exclusion from the Settlement Class.

CHALLENGE FORM

Check the box below ONLY if you wish to challenge the dates listed on Page 2. All fields must be complete for your challenge to be accepted:

- I wish to challenge the employment dates listed above. I have included a written statement detailing what I believe to be my correct dates of employment as a union Sales Representative with SWS in California during the period from August 17, 2006 through May 31, 2012. I have also included information and/or documentary evidence that supports my challenge. I understand that by submitting this challenge I authorize the Administrator to review SWS' records and determine the validity of my challenge and that this includes information related to any possible Family Medical Leave Act (FMLA)/California Family Responsibility Act (CFRA) or other leave that I may have been on while employed by SWS.

Signature

Name of Class Member _____ **[preprinted]**

Class Member ID Number (from address label): _____
[preprinted]

I believe that my correct dates of employment as a Sales Representative for SWS during the Class Period, excluding leaves of absence, are _____ to _____.

Statement of reasons and documentation of dates of employment as Sales Representative during Class Period, according to Class Member:

[Attach documentation and use separate page(s) as necessary]

**ESTIMATED SHARE FORM and CHALLENGE INSTRUCTIONS for
FORMER EMPLOYEE CLASS MEMBERS**

*For Class Members Not Employed by Southern Wine & Spirits of America, Inc. ("SWS")
as of May 31, 2012*

GENE JOVICH, ET AL. V. SOUTHERN WINE & SPIRITS OF AMERICA, INC., CASE
NO. CV10-04405 JSW, IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF
CALIFORNIA

Your estimated share of the settlement in this case is \$XXXXX. This estimate is based on your dates of employment as a union Sales Representative between August 17, 2006 and May 31, 2012, excluding leaves of absence and suspensions, as listed on page 2 of this Form.

Because you were not employed by SWS as of May 31, 2012, you must file the enclosed Claim Form if you want to receive a monetary payment under the Settlement Agreement.

If you do not agree with the dates of employment listed on Page 2 of this Form, you must submit the Challenge Form in addition to your Claim Form. Submitting a Challenge Form does NOT satisfy the additional requirement that you file a Claim Form. However, if you agree with the dates, you need only submit a Claim Form to receive your share of the settlement.

TO CHALLENGE YOUR LISTED DATES OF EMPLOYMENT AS A UNION SALES REPRESENTATIVE DURING THE CLASS PERIOD, **THIS FORM MUST BE SIGNED AND POSTMARKED OR FAXED NOT LATER THAN [45 DAYS AFTER MAILING].**

<p>MAIL TO: CLAIMS ADMINISTRATOR c/o KURZMAN CARSON CONSULTANTS [INSERT ADDRESS]</p>

Important:

1. You do NOT have to submit this form if you believe the dates of employment listed below are accurate.
2. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment.
3. If you change your mailing address, please send your new mailing address to the Administrator. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your settlement payment.

EMPLOYMENT DATES AND CHALLENGE INFORMATION

<<Name>>

<<Address>>

<<City>>, <<State> <Zip>>

(____) _____ -- _____
Home Telephone Number

Your Weeks Worked

SWS' payroll records show that during the Class Period of August 17, 2006 through May 31, 2012, you held the position of union Sales Representative in California in the following time period(s):	During this time, you were on a leave of absence for ____ days during the following time period(s):
<<Dates>>	<<Dates>>

Your total number of points for Weeks Worked is: <<points>>

Your pro-rata share of the Expense Reimbursement Payments Fund (as defined in the accompanying Notice) is: <<____%>>

The Expense Reimbursement Payments Fund is estimated to be: <<\$____>>

Your Estimated Payment

Based on the total number of points for Weeks Worked, your total Settlement Award is currently estimated at \$<<____>>. This consists of a lump sum of \$250.00 as a Class Participation Award plus your pro-rata share of the Expense Reimbursement Payments Fund, which is currently estimated to be \$<<____>>. This amount may increase or decrease depending on factors such as, but not limited to, the outcome of any challenges by Class Members to their dates of employment and the number opt outs, if any. **You must submit a timely Claim Form to receive these payments.** If you do not submit a Claim Form, you will not receive any payment and this money will be used to increase payments to Participating Settlement Class Members.

CHALLENGE FORM

Check the box below ONLY if you wish to challenge the dates listed on Page 2. All fields must be complete for your challenge to be accepted:

- I wish to challenge the employment dates listed above. I have included a written statement detailing what I believe to be my correct dates of employment as a union Sales Representative with SWS in California during the period from August 17, 2006 through May 31, 2012. I have also included information and/or documentary evidence that supports my challenge. I understand that by submitting this challenge I authorize the Administrator to review SWS' records and determine the validity of my challenge and that this includes information related to any possible Family Medical Leave Act (FMLA)/California Family Responsibility Act (CFRA) or other leave that I may have been on while employed by SWS.

Signature

Name of Class Member _____ **[preprinted]**

Class Member ID Number (from address label): _____
[preprinted]

I believe that my correct dates of employment as a Sales Representative for SWS during the Class Period, excluding leaves of absence, are _____ to _____.

Statement of reasons and documentation of dates of employment as a Sales Representative during the Class Period, according to Class Member:

[Attach documentation and use separate page(s) as necessary]

EXHIBIT D

CLAIM FORM

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

Gene Jovich, et al. v. Southern Wine & Spirits of America, Inc., Case No. CV10-04405 JSW.

YOUR SETTLEMENT “CLAIM SHARE”

According to Southern Wine and Spirits of America, Inc.’s (“SWS”) payroll records, you worked a total of _____ weeks as a union Sales Representative in California during the period of August 17, 2006 through May 31, 2012, not including periods of leave or suspension, and you were no longer employed by SWS as of May 31, 2012.

Based on this information, the estimated pro-rata share amount you will receive under the settlement is \$_____. This amount may increase or decrease, based on several factors including but not limited to the outcome of any challenges to Weeks Worked submitted by Class Members, the number of Request[s] for Exclusion submitted, and whether additional Class Members are identified or come forward. If you submit this Claim Form you will receive an additional lump sum of \$250.00 as a Class Participation Award for a total Settlement Award of <<\$____>>.

INSTRUCTIONS

- To receive the monetary recovery described above, you **must** complete, sign, date, and mail this Claim Form on or before **[60 days after mailing], 2012. Claim Forms which are incomplete or postmarked after this date will be rejected.**
- If you disagree with the number of Weeks Worked reflected above, please complete the enclosed Challenge Form, including all documents you would like the Settlement Administrator to consider, and submit it along with your completed Claim Form. **If you wish to challenge your Weeks Worked, you must submit a Challenge Form AND a completed Claim Form to receive a Settlement Award.**

PLEASE COMPLETE THE FOLLOWING

1. Please review the following identifying information in the left-hand column, and make any necessary changes in the right-hand column:

Claim # First Last Address1 Address2 City, State, Zip, Country (_____) _____ Area Code Telephone Number	Name/Address Changes (if any): _____ _____ _____ _____ (_____) _____ Area Code Home Telephone Number
--	--

[Important: If you move, please send the Settlement Administrator your new address]

2. By signing below, I am agreeing to provide a full and complete release of any and all “Released Claims,” as fully explained to me in Section ____ of the accompanying *Notice of Proposed Class Action Settlement and Fairness Hearing*, in exchange for receipt of the benefits offered under the Settlement Agreement. I understand that by signing and submitting this Claim Form, I will be bound by all terms

and conditions contained in the Settlement Agreement, as well as all Orders entered by the Court overseeing the settlement. The undersigned hereby certifies under penalty of perjury under the laws of the United States and the State of California that all of the information provided by Claimant in this Claim Form is true and correct.

Date (mm/dd/yyyy): _____
(Must be filled in by Claimant)

Signature of Claimant

(Print Name Clearly)

**If You Have Any Questions, Please Contact The “SWS Sales Representative Settlement Administrator,
c/o [insert name] At [Telephone Number]**