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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO**

ANDREW ELLENBERG-WILEY, an  
individual, on behalf of himself and on behalf  
of all persons similarly situated,

Plaintiff,

v.

SAN FRANCISCO AIDS FOUNDATION, a  
California nonprofit corporation; and DOES 1-  
50, Inclusive,

Defendants.

Case No.: CGC-23-609040

[Action Filed September 13, 2023]

**CLASS ACTION AND PAGA  
SETTLEMENT AND RELEASE OF  
CLAIMS**

This Settlement Agreement and Release of Claims is entered into by and between Plaintiff ANDREW ELLENBERG-WILEY (hereinafter "Plaintiff"), individually, on behalf of himself and on behalf of all persons similarly situated, and Defendant SAN FRANCISCO AIDS FOUNDATION (hereinafter "Defendant") (together the "Parties"):

**I. DEFINITIONS**

- A. "Action" shall mean the putative class action lawsuit *Ellenberg v. San Francisco Aids Foundation*, Case No. CGC-23-6090404, filed in San Francisco County Superior Court.
- B. "Agreement" or "Settlement Agreement" means this CLASS ACTION AND PAGA SETTLEMENT AND RELEASE OF CLAIMS.
- C. "Aggrieved Employees" means all current and former non-exempt California employees employed by Defendant between September 11, 2022 and the earlier of the date the Court grants preliminary approval of the class settlement or the date on which the total number of Workweeks worked by Class Members equals 15,500.
- D. "Attorneys' Expenses" means the award of expenses that the Court authorizes to be paid to Class Counsel for the actual costs they have incurred of up to \$30,000.
- E. "Attorneys' Fees" means the award of fees that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Settlement Class in the Action, currently not to exceed one-third of the Gross Settlement Amount (currently estimated to be \$128,333.33 out of \$385,000.00). Attorneys' Fees will be divided between Class Counsel as follows: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Plaintiff expressly consents to this fee division.
- F. "Claims Administration Expenses" shall mean the amount that the Court authorizes to be paid to the Settlement Administrator for administering the Settlement pursuant to this Agreement currently estimated not to exceed \$8,600.00.
- G. "Class" or the "Class Members" means all persons who are or previously were employed by Defendant in California and classified as non-exempt employees at any

time during the period between September 13, 2019 and the earlier of the date the Court grants preliminary approval of the class settlement or the date on which the total number of Workweeks worked by Class Members equals 15,500.

H. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and Shani Zakay, Esq. of Zakay Law Group, APLC.

I. “Class Data” means information regarding Class Members that Defendant will in good faith compile from their records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known address; Social Security Number; start dates and end dates of employment.

J. “Class Period” means the period from September 13, 2019, to the earlier of the date the Court grants preliminary approval of the Settlement or the date on which the total number of Workweeks worked by Class Members equals 15,500.

K. “Class Representative” shall mean Andrew Ellenberg-Wiley.

L. “Court” means the Superior Court for the State of California, County of San Francisco.

M. “Defendant” shall mean San Francisco Aids Foundation.

N. “Effective Date” means the date upon which both of the following have occurred the Court enters judgment granting final approval of the Settlement and the Court’s judgment approving the Settlement becomes final. The judgment is final as of the following: (i) if no Class Member files a Notice of Objection to the Settlement, the day the Court enters Judgment in the Action; or (ii) if there is an appeal of the Court’s judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with any appellate court that has jurisdiction; or (iii) if a petition for review is filed, the date of denial of the petition or the date the Court’s judgment is entered, pursuant to such petition; or (iv) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Court’s judgment. If a timely Notice of Objection to the Settlement is

1 filed (including an objection from the LWDA), the Effective Date shall be the later  
2 of: (a) the date on which the time for all appeals relating to objections to the  
3 Settlement and the final approval order has expired; or (b) if an appeal, review, or  
4 writ is sought, the date on which the highest reviewing court renders its decision  
5 denying any petition (were the immediately lower court affirmed the judgment) or  
6 affirming the judgment. Provided, however, if the LWDA has commenced an  
7 investigation or issued a citation prior to the Effective Date, as determined under the  
8 foregoing definition, the Effective Date will be extended to the date that the LWDA  
9 concludes its investigation or resolves the citation (whichever is later), or if the  
10 LWDA objects to the Settlement, the date when the LWDA's objection to the  
11 Settlement is resolved and no longer appealable.

12 O. "Funding Date" shall be within thirty (30) calendar day after the Effective Date and  
13 is the date by which Defendant has paid the entire Gross Settlement Amount to the  
14 Settlement Administrator in accord with the terms of this Agreement.

15 P. "Gross Settlement Amount" means Three Hundred Eighty-Five Thousand Dollars  
16 and Zero Cents (\$385,000.00) that Defendant must pay into the QSF in connection  
17 with this Settlement, inclusive of the sum of Individual Settlement Payments, Claims  
18 Administration Expenses, Attorneys' Fees and Attorneys' Expenses, Service Award,  
19 and the PAGA Payment and **exclusive** of the employer's share of payroll tax, if any,  
20 triggered by any payment under this Settlement, and Plaintiff's individual settlement  
21 payment, which is the subject of a separate settlement agreement.

22 Q. "Individual Settlement Payments" means the amount payable from the Net Settlement  
23 Amount to each Settlement Class Member and excludes any amounts distributed to  
24 Aggrieved Employees pursuant to PAGA.

25 R. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less  
26 Attorneys' Fees and Attorneys' Expenses, Service Award, PAGA Payment, and  
27 Claims Administration Expenses.

28 S. "Notice Packet" means the Class Notice to be provided to the Class Members by the

Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

T. “Operative Complaint” shall mean the First Amended Complaint (“FAC”) on file in the Action.

U. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 et seq.

V. “PAGA Payment Ratio” means the respective PAGA Pay Periods during the PAGA Period for each Aggrieved Employee divided by the sum total of the PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.

W. “PAGA Payment” shall mean Twenty Thousand Dollars and Zero Cents (\$20,000.00) to be allocated from the Gross Settlement Amount, with 25% of the payment (\$5,000.00) going to the Aggrieved Employees (“Aggrieved Employee Payment”) and 75% of the payment (\$15,000.00) going to the LWDA (“LWDA Payment”). The amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code section 2699(l). Any reallocation of the Gross Settlement Amount to increase the PAGA Payment will not constitute grounds by either party to void this Agreement, so long as the Gross Settlement Amount remains the same.

X. “PAGA Pay Periods,” for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of pay periods of employment during the PAGA Period that each Aggrieved Employee worked for Defendant in California.

Y. “PAGA Period” means the period from September 11, 2022, to the earlier of the date the Court grants preliminary approval of the Settlement or the date on which the total number of Workweeks worked by class members equals 15,500.

Z. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

AA. “Payment Ratio” means the respective Workweeks for each Class Member divided by the sum total of Workweeks for all Class Members during the Class Period.

1 BB. *“Plaintiff” shall mean Andrew Ellenberg-Wiley.*

2 CC. *“QSF” means the “Qualified Settlement Fund” established, designated, and*  
3 *maintained by the Settlement Administrator to fund the Gross Settlement Amount.*

4 DD. *“Released Class Claims” shall mean the release all class claims that were alleged, or*  
5 *that reasonably could have been alleged, based on the facts alleged in the Operative*  
6 *Complaint which occurred during the Class Period, and expressly excluding all other*  
7 *claims, including claims for vested benefits, wrongful termination, unemployment*  
8 *insurance, disability, social security, workers’ compensation, and class claims outside*  
9 *of the Class Period.*

10 EE. *“Released PAGA Claims” shall mean all PAGA claims alleged in the Operative*  
11 *Complaint and Plaintiff’s PAGA notice to the LWDA which occurred during the*  
12 *PAGA Period, and expressly excluding all other claims, including claims for vested*  
13 *benefits, wrongful termination, unemployment insurance, disability, social security,*  
14 *workers’ compensation, and PAGA claims outside of the PAGA Period.*

15 FF. *“Released Parties” shall mean Defendant and all of its past, present, and future related*  
16 *direct or indirect companies, parents, owners, subsidiaries, predecessors, successors,*  
17 *affiliates and assigns, as well as each of its past, present, and future officers, directors,*  
18 *employees, partners, members, shareholders and agents, attorneys, insurers, and*  
19 *reinsurers, plus any individual or entity which could be jointly liable with Defendant.*

20 GG. *“Response Deadline” means the date forty-five (45) calendar days after the Settlement*  
21 *Administrator first mails Notice Packets to Class Members and the last date on which*  
22 *Class Members may submit Requests for Exclusion or Notices of Objections to the*  
23 *Settlement.*

24 HH. *“Service Award” mean an award in the amount of \$10,000.00 or in an amount that*  
25 *the Court authorizes to be paid to the Class Representative, in addition to his*  
26 *Individual Settlement Payment and his individual Aggrieved Employee Payment, in*  
27 *recognition of his efforts and risks in assisting with the prosecution of the Action.*

28 II. *“Settlement” means the disposition of the Action pursuant to this Agreement.*

1 JJ. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,  
2 Suite 164 Irvine, CA 92618; Tel: 1-800-355-0700. The Settlement Administrator  
3 establishes, designates and maintains, as a QSF under Internal Revenue Code section  
4 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross  
5 Settlement Amount is deposited for the purpose of resolving the claims of Settlement  
6 Class Members. The Settlement Administrator shall maintain the funds until  
7 distribution in an account(s) segregated from the assets of Defendant and any person  
8 related to Defendant. **All accrued interest shall be paid and distributed to the**  
9 **Settlement Class Members as part of their respective Individual Settlement**  
10 **Payment.**

11 KK. "Settlement Class Members" or "Settlement Class" means all Class Members who  
12 have not submitted a timely and valid Request for Exclusion as provided in this  
13 Agreement.

14 LL. "Workweeks," or "Workweek" as used herein shall, mean a period of seven (7)  
15 consecutive days beginning on Sunday and ending on Saturday, in which a Class  
16 Member or Aggrieved Employee was employed for at least a portion of one day by  
17 Defendant in California.

18 **II. RECITALS**

19 A. On September 11, 2023, Plaintiff filed a Notice of Violations with the Labor and  
20 Workforce Development Agency ("LWDA") and served the same on Defendant.

21 B. On September 13, 2023, Plaintiff filed the Action, alleging claims for:

- 22 1. Unfair competition in violation of Cal. Bus. & Prof. Code § 17200 et seq;
- 23 2. Failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197  
24 & 1197.1;
- 25 3. Failure to pay overtime wages in violation of Cal. Lab. Code §§ 510 et seq;
- 26 4. Failure to provide required meal periods in violation of Cal. Lab. Code §§  
27 226.7 & 512 and the applicable IWC Wage Order;
- 28

5. *Failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order;*
6. *Failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203;*
7. *Failure to provide accurate itemized statements in violation of Cal. Lab. Code § 226; and*
8. *Failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802.*

C. *On November 8, 2023, Plaintiff filed the FAC for the purpose of adding an additional claim for violations of the PAGA pursuant to Cal. Lab. Code §§ 2698 et seq.*

D. *The Class Representative believes he has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.*

E. *Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times they complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.*

F. *The Class Representative is represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendant pursuant to informal requests for information to prepare for mediation. Defendant produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed with*



1           the assistance of an expert. Based on their own independent investigation and  
2           evaluation, Class Counsel are of the opinion that the Settlement with Defendant is  
3           fair, reasonable, and adequate, and is in the best interest of the Settlement Class  
4           considering all known facts and circumstances, including the risks of significant  
5           delay, defenses asserted by Defendant, uncertainties regarding class certification, and  
6           numerous potential appellate issues.

7           G.    On August 20, 2024, the Parties participated in mediation presided over by Steve  
8           Rottman, Esq., an experienced mediator of wage and hour class and PAGA actions.  
9           The mediation concluded with a settlement, which was subsequently memorialized in  
10          the form of a “Memorandum of Understanding”.

11          H.    This Agreement replaces and supersedes the Memorandum of Understanding and any  
12          other agreements, understandings, or representations between the Parties. This  
13          Agreement represents a compromise and settlement of highly disputed claims.  
14          Nothing in this Agreement is intended or will be construed as an admission by  
15          Defendant that the claims in the Action of Plaintiff or the Class Members have merit  
16          or that Defendant bear any liability to Plaintiff or the Class on those claims or any  
17          other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action  
18          have merit.

19          I.    The Parties believe that the Settlement is fair, reasonable and adequate. The  
20          Settlement was arrived at through arm’s-length negotiations, taking into account all  
21          relevant factors. The Parties recognize the uncertainty, risk, expense and delay  
22          attendant to continuing the Action through trial and any appeal. Accordingly, the  
23          Parties desire to settle, compromise and discharge all disputes and claims arising from  
24          or relating to the Action fully, finally, and forever.

25          J.    The Parties agree to certification of the Class for purposes of this Settlement only. If  
26          for any reason the settlement does not become effective, Defendant reserves the right  
27          to contest certification of any class for any reason and reserve all available defenses  
28          to the claims in the Action.

Based on these recitals that are a part of this Agreement, the Parties agree as follows:

**III. TERMS OF AGREEMENT**

**A. Consideration.**

1. Payment by Defendant. The Parties agree that, in consideration for a full and complete settlement of the Action and the releases set forth in this Settlement, Defendant will pay Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$385,000.00) (the "Gross Settlement Amount"). Defendant shall separately pay the employer's share of applicable payroll taxes. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant.
2. Release by the Settlement Class Members. Upon funding of the Gross Settlement Amount and in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members, for themselves and their estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the release the Released Parties from the Released Class Claims for the Class Period.
3. Release by the Aggrieved Employees. Upon funding of the Gross Settlement Amount and in exchange for the consideration set forth in this Agreement, the LWDA, the State of California, the Plaintiff and the Aggrieved Employees, for themselves and their estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendant for the Released PAGA Claims. The express purpose of this Settlement is to forever bar Plaintiff, the LWDA, the State of California and the Aggrieved Employees from acting on behalf of or

purporting to act on behalf of the LWDA to assert any of the Aggrieved Employees' Released PAGA Claims against the Released Parties in any future litigation.

4. Class Size. Defendant estimates that the Settlement Class was comprised of 194 individuals who collectively worked approximately 13,500 Workweeks ("Projected Workweeks") during the Class Period. Thirty (30) calendar days following the full execution of this Agreement, Defendant shall transmit the Class Data to the Settlement Administrator in order for the Settlement Administrator to calculate the number of Class Members and the number of Workweeks during the Class Period. If the number of Workweeks is more than 15% of the estimate stated herein, Defendant shall, at its option, agree to either (a) increase the Gross Settlement Amount proportionally for the number of Workweeks over 115% of 13,500 (15,500), or (b) shorten the release by advancing the end of the Class Period and PAGA Period to the date on which the number of Workweeks was 15,500.

5. Settlement Payment. Defendant shall deposit the Gross Settlement Amount into the QSF by the Funding Date. If no funds are distributed (e.g., because final approval is reversed on appeal) then Defendant is entitled to prompt return of the principal and all interest accrued.

B. Nullification of Settlement Agreement. If (a) Defendant fails to fully fund the Gross Settlement Amount or (b) in the event the Settlement Agreement is not granted final approval by the Court, or if the Court's order granting final approval fails to become effective or is reversed, modified or withdrawn, or Defendant is otherwise prevented or prohibited from obtaining the Released Class Claims and/or the Released PAGA claims, then:

1. This Settlement Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or

arbitral 28

proceeding for any purpose or with respect to any issue, substantive or procedural;

2. The conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

4. If the Agreement is nullified due to Defendant's failure to fully fund the Gross Settlement Amount, then Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Claims Administration Expenses incurred to the date of nullification. If the Agreement is nullified for any other reason, both Parties shall equally bear the responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Claims Administration Expenses incurred to the date of nullification.

C. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Class Claims and/or the Released PAGA Claims, the conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

D. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are

1 not relying on any statement or representation by the Parties in this regard. Class  
2 Members and/or Aggrieved Employees understand and agree that they will be  
3 responsible for the payment of any taxes and penalties assessed on the Individual  
4 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved  
5 Employee Payment described and will be solely responsible for any penalties or other  
6 obligations resulting from their personal tax reporting of Individual Settlement  
7 Payments and/or Aggrieved Employees' individual shares of the Aggrieved  
8 Employees Payment.

9 E. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
10 the "acknowledging party" and each Party to this Agreement other than the  
11 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision  
12 of this Agreement, and no written communication or disclosure between or among the  
13 Parties or their attorneys and other advisers, is or was intended to be, nor shall any  
14 such communication or disclosure constitute or be construed or be relied upon as, tax  
15 advice within the meaning of United States Treasury Department circular 230 (31 CFR  
16 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,  
17 her or its own, independent legal and tax counsel for advice (including tax advice) in  
18 connection with this Agreement, (b) has not entered into this Agreement based upon  
19 the recommendation of any other Party or any attorney or advisor to any other Party,  
20 and (c) is not entitled to rely upon any communication or disclosure by any attorney  
21 or adviser to any other party to avoid any tax penalty that may be imposed on the  
22 acknowledging party, and (3) no attorney or adviser to any other Party has imposed  
23 any limitation that protects the confidentiality of any such attorney's or adviser's tax  
24 strategies (regardless of whether such limitation is legally binding) upon disclosure by  
25 the acknowledging party of the tax treatment or tax structure of any transaction,  
26 including any transaction contemplated by this Agreement.

27 F. Preliminary Approval Motion. No later than 45 days after this Settlement Agreement  
28 is fully executed, Plaintiff shall file with the Court a motion for order granting

1 preliminary approval and supporting papers, which shall include this Settlement  
2 Agreement. Plaintiff will provide Defendant with a draft of the motion at least five (5)  
3 business days prior to the filing of the motion to give Defendant an opportunity to  
4 propose changes or additions to the motion.

5 G. Settlement Administrator. The Settlement Administrator shall perform all duties  
6 related to the administration of the Settlement as described in this Agreement  
7 including, without limitation, establishing and administering the QSF; calculating,  
8 processing and mailing payments to the Class Representative, Class Counsel, LWDA,  
9 Aggrieved Employees and Class Members; printing and mailing the Notice Packets to  
10 the Class Members and Aggrieved Employees as directed by the Court; receiving and  
11 reporting the objections and requests for exclusion; calculating, deducting and  
12 remitting all legally required taxes from Individual Settlement Payments and  
13 distributing tax forms for the Wage Portion, the Penalty Portion and the Interest  
14 Portion of the Individual Settlement Payments and/or Aggrieved Employees'  
15 individual shares of the Aggrieved Employee Payment; processing and mailing tax  
16 payments to the appropriate state and federal taxing authorities; providing  
17 declaration(s) as necessary in support of preliminary and/or final approval of this  
18 Settlement; and other tasks as the Parties mutually agree or the Court orders the  
19 Settlement Administrator to perform. The Settlement Administrator shall keep the  
20 Parties timely apprised of the performance of all Settlement Administrator  
21 responsibilities by among other things, sending a weekly status report to the Parties'  
22 counsel stating the date of the mailing, the number of Requests for Exclusion it  
23 receives (including the numbers of valid and deficient), and number of Notices of  
24 Objections received. The Settlement Administrator shall also be responsible for  
25 creating and maintaining a webpage hosted on its website containing information  
26 about the Settlement including but not limited to, a timeline for approval, dates and  
27 locations of approval hearings, and settlement distribution through the check cashing  
28 deadline.

1           H.    Notice Procedure.

2           1.    Class Data.   No later than ten (10) business days after Defendant receives  
3                   notice of an order granting preliminary approval of this Settlement, Defendant  
4                   shall provide the Settlement Administrator with the Class Data for purposes  
5                   of preparing and mailing Notice Packets to the Class Members. The Class  
6                   Data will be presumed to be correct unless a particular Class Member proves  
7                   otherwise to the Settlement Administrator by credible written evidence. All  
8                   Workweek disputes will be resolved and decided by the Settlement  
9                   Administrator, and the Settlement Administrator's decision on all Workweek  
10                  disputes is final and non-appealable. The Class Data provided to the  
11                  Settlement Administrator will not be provided to Class Counsel, and it will  
12                  remain confidential; it shall be used solely to administer the Settlement, and  
13                  it will not be used or disclosed to anyone except as required by applicable tax  
14                  authorities, pursuant to Defendant's express written consent, or by order of  
15                  the Court.

16          2.    Notice Packets.

17           a)    The Notice Packet shall contain the notice of class action settlement  
18                   ("Class Notice") in a form substantially similar to **Exhibit A**. The  
19                   Class Notice shall inform Class Members and Aggrieved Employees  
20                   that they need not do anything in order to receive their payment and to  
21                   keep the Settlement Administrator apprised of any changes to their  
22                   mailing address. The Class Notice shall set forth the scope of the  
23                   release. Each Class Notice shall state the number of Workweeks and  
24                   PAGA Pay Periods, if any, and the estimated amount of their  
25                   Individual Settlement Payment and each Aggrieved Employee's  
26                   individual share of the Aggrieved Employee Payment, if any. The  
27                   Settlement Administrator shall use the Class Data to determine the  
28                   number of Workweeks and PAGA Pay Periods. The Class Notice will

1 also advise the Aggrieved Employees that they will release the  
2 Released PAGA Claims and will receive their share of the Aggrieved  
3 Employee Payment regardless of whether they request to be excluded  
4 from the Settlement.

5 b) The Notice Packet's mailing envelope shall include the following  
6 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE  
7 ENTITLED TO PARTICIPATE IN A CLASS ACTION  
8 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR  
9 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED  
10 NOTICE."

11 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the  
12 Settlement Administrator will perform a search based on the National Change  
13 of Address Database to update and correct any known or identifiable address  
14 changes. No later than twenty-one (21) calendar days after preliminary  
15 approval of the Settlement, the Settlement Administrator shall mail copies of  
16 the Notice Packet to all Class Members via regular First-Class U.S. Mail. The  
17 Settlement Administrator shall exercise its best judgment to determine the  
18 current mailing address for each Class Member. The address identified by the  
19 Settlement Administrator as the current mailing address shall be presumed to  
20 be the best mailing address for each Class Member.

21 4. Undeliverable Notices. Any Notice Packets returned to the Settlement  
22 Administrator as non-delivered on or before the Response Deadline shall be  
23 re-mailed to any forwarding address provided. If no forwarding address is  
24 provided, the Settlement Administrator shall promptly attempt to determine a  
25 correct address by lawful use of skip-tracing, or other search using the name,  
26 address and/or Social Security number of the Class Member involved, and  
27 shall then perform a re-mailing, if another mailing address is identified by the  
28 Settlement Administrator. In addition, if any Notice Packets, which are



1 addressed to Class Members who are currently employed by Defendant, are  
2 returned to the Settlement Administrator as non-delivered and no forwarding  
3 address is provided, the Settlement Administrator shall notify Defendant.  
4 Defendant will request that the currently employed Class Member provide a  
5 corrected address and transmit to the Administrator any corrected address  
6 provided by the Class Member. Class Members who received a re-mailed  
7 Notice Packet shall have their Response Deadline extended fifteen (15) days  
8 from the original Response Deadline.

9 5. Disputes Regarding Individual Settlement Payments. Class Members will  
10 have the opportunity to dispute the Class Data by providing documentation  
11 and/or an explanation regarding the dispute. If there is a dispute, the  
12 Settlement Administrator will consult with the Parties to determine whether  
13 an adjustment is warranted. The Settlement Administrator shall determine the  
14 eligibility for, and the amounts of, any Individual Settlement Payments under  
15 the terms of this Agreement. The Settlement Administrator's determination  
16 of the eligibility for and amount of any Individual Settlement Payment shall  
17 be binding upon the Class Member and the Parties.

18 6. Disputes Regarding Administration of Settlement. Any disputes not resolved  
19 by the Settlement Administrator concerning the administration of the  
20 Settlement will be resolved by the Court under the laws of the State of  
21 California. Before any such involvement of the Court, counsel for the Parties  
22 will confer in good faith to resolve the disputes without the necessity of  
23 involving the Court.

24 7. Exclusions. The Class Notice contained in the Notice Packet shall state that  
25 Class Members who wish to exclude themselves from the Settlement must  
26 submit a written Request for Exclusion form by the Response Deadline. The  
27 written Request for Exclusion must state that the Class Member wishes to  
28 exclude himself or herself from the Settlement and (1) must contain the name,

1 address, and the last four digits of the Social Security number of the person  
2 requesting exclusion; (2) must be signed by the Class Member; (3) must be  
3 postmarked or fax stamped by the Response Deadline and returned to the  
4 Settlement Administrator at the specified address or fax telephone number;  
5 and (4) contain a typewritten or handwritten notice stating in substance: “I  
6 wish to opt out of the settlement of the class action lawsuit entitled *Ellenberg*  
7 *v. San Francisco Aids Foundation*, current pending in San Francisco County  
8 Superior Court, Case No. CGC-23-609040. I understand that by requesting  
9 to be excluded from the settlement, I will receive no money from the  
10 Settlement described in this Notice.” The Request for Exclusion will not be  
11 valid if it is not timely submitted, if it is not signed by the Class Member, or  
12 if it does not contain the name and address and last four digits of the Social  
13 Security number of the Class Member. The date of the postmark on the  
14 mailing envelope or fax stamp on the Request for Exclusion shall be the  
15 exclusive means used to determine whether the Request for Exclusion was  
16 timely submitted. Any Class Member who requests to be excluded from the  
17 Settlement Class will not be entitled to an Individual Settlement Payment and  
18 will not be otherwise bound by the terms of the Settlement or have any right  
19 to object, appeal or comment thereon. However, any Class Member that  
20 submits a timely Request for Exclusion that is also a member of the Aggrieved  
21 Employees will still receive his/her pro rata share of the Aggrieved Employee  
22 Payment, as specified below, and in consideration, will be bound by the  
23 Released PAGA Claims as set forth herein. Class Members who fail to submit  
24 a valid and timely written Request for Exclusion on or before the Response  
25 Deadline shall be bound by all terms of the Settlement and any final judgment  
26 entered in this Action if the Settlement is approved by the Court. No later  
27 than fourteen (14) calendar days after the Response Deadline, the Settlement  
28 Administrator shall provide counsel for the Parties with a final list of the Class

Members who have timely submitted written Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion from the Settlement.

8. Objections. The Class Notice contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection, if in writing, must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the Settlement Class Member’s Social Security number; (5) the basis for the objection; and (6) if the Settlement Class Member intends to appear at the final approval/settlement fairness hearing. Class Members who fail to make objections in writing in the manner specified above may still make their objections orally at the final approval/settlement fairness hearing with the Court’s permission. Settlement Class Members will have a right to appear at the final approval/settlement fairness hearing to have their objections heard by the Court regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the order and final judgment. Class Members who submit a written Request for Exclusion may not object to the Settlement. Class Members may not object to the PAGA Payment.
9. Option to Nullify. Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if more than 10% of the Class Members submit Notices of Objection and/or Requests for Exclusion.

1           I.     Funding and Allocation of the Gross Settlement Amount. Defendant is required to pay  
2     the Gross Settlement Amount, plus any employer's share of payroll taxes as mandated  
3     by law, within thirty (30) calendar days after the Effective Date.

4           1.     Calculation of Individual Settlement Payments. Individual Settlement  
5     Payments shall be paid from the Net Settlement Amount and shall be paid  
6     pursuant to the formula set forth herein. Using the Class Data, the Settlement  
7     Administrator shall add up the total number of Workweeks for all Class  
8     Members. The respective Workweeks for each Class Member will be divided  
9     by the total Workweeks for all Class Members, resulting in the Payment Ratio  
10    for each Class Member. Each Class Member's Payment Ratio will then be  
11    multiplied by the Net Settlement Amount to calculate each Class Member's  
12    estimated Individual Settlement Payments. Each Individual Settlement  
13    Payment will be reduced by any legally mandated employee tax withholdings  
14    (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class  
15    Members who submit valid and timely Requests for Exclusion will be  
16    redistributed to Settlement Class Members who do not submit valid and timely  
17    Requests for Exclusion on a pro rata basis based on their respective Payment  
18    Ratios.

19          2.     Calculation of Individual Payments to the Aggrieved Employees. Using the  
20    Class Data, the Settlement Administrator shall add up the total number of  
21    PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.  
22    The respective PAGA Pay Periods for each Aggrieved Employee will be  
23    divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting  
24    in the "PAGA Payment Ratio" for each Aggrieved Employee. Each  
25    Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the  
26    Aggrieved Employee's portion of the Aggrieved Employee Payment,  
27    \$5,000.00 (25% of \$20,000.00), to calculate each Aggrieved Employee's  
28    estimated share of the Aggrieved Employee Payment.

- 1                   3.     Allocation of Individual Settlement Payments. For tax purposes, Individual  
2                   Settlement Payments shall be allocated and treated as 20% wages (“Wage  
3                   Portion”) and 40% penalties (“Penalty Portion”) and 40% pre-judgment  
4                   interest (“Interest Portion”). The Wage Portion of the Individual Settlement  
5                   Payments shall be reported on IRS Form W-2 and the Penalty Portion and  
6                   Interest Portion of the Individual Settlement Payments shall be reported on  
7                   IRS Form 1099 pursuant to the Settlement Agreement. Plaintiff and each  
8                   Settlement Class Member shall bear the full responsibility for payment of any  
9                   taxes or withholdings that are found to be owed from the Individual Settlement  
10                  Payments.
- 11                 4.     Allocation of Aggrieved Employee Payments. For tax purposes, individual  
12                  Aggrieved Employee Payments shall be allocated and treated as 100%  
13                  penalties and shall be reported on IRS Form 1099.
- 14                 5.     No Credit Toward Benefit Plans. The Individual Settlement Payments and  
15                  individual shares of the Aggrieved Employee Payment made to Settlement  
16                  Class Members and/or Aggrieved Employees under this Settlement  
17                  Agreement, as well as any other payments made pursuant to this Settlement  
18                  Agreement, will not be utilized to calculate any additional benefits under any  
19                  benefit plans to which any Class Members may be eligible, including, but not  
20                  limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase  
21                  plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.  
22                  Rather, it is the Parties’ intention that this Settlement Agreement will not  
23                  affect any rights, contributions, or amounts to which any Class Members may  
24                  be entitled under any benefit plans.
- 25                 6.     All monies received by Settlement Class Members under the Settlement which  
26                  are attributable to wages shall constitute income to such Settlement Class  
27                  Members solely in the year in which such monies actually are received by the  
28                  Settlement Class Members. It is the intent of the Parties that Individual

1                   *Settlement Payments and individual shares of the Aggrieved Employee Payment*  
2                   *provided for in this Settlement Agreement are the sole payments to be made by*  
3                   *Defendant to Settlement Class Members and/or Aggrieved Employees in*  
4                   *connection with this Settlement Agreement, with the exception of Plaintiff, and*  
5                   *that the Settlement Class Members and/or Aggrieved Employees are not entitled*  
6                   *to any new or additional compensation or benefits as a result of having received*  
7                   *the Individual Settlement Payments and/or their individual shares of the*  
8                   *Aggrieved Employee Payment.*

9                   7.    Mailing.   *Individual Settlement Payments and individual shares of the*  
10                  *Aggrieved Employee Payment shall be mailed by regular First-Class U.S.*  
11                  *Mail to Settlement Class Members' and/or Aggrieved Employees' last known*  
12                  *mailing address no later than fourteen (14) calendar days after the Funding*  
13                  *Date.*

14                  8.    Expiration.   *Any checks issued to Settlement Class Members and Aggrieved*  
15                  *Employees shall remain valid and negotiable for one hundred and eighty (180)*  
16                  *days from the date of their issuance. If a Settlement Class Member and/or*  
17                  *Aggrieved Employee does not cash his or her settlement check within ninety*  
18                  *(90) days, the Settlement Administrator will send a letter to such persons,*  
19                  *advising that the check will expire after the 180th day, and invite that*  
20                  *Settlement Class Member and/or Aggrieved Employee to request reissuance*  
21                  *in the event the check was destroyed, lost or misplaced. In the event an*  
22                  *Individual Settlement Payment and/or Aggrieved Employee's individual*  
23                  *share of the Aggrieved Employee Payment check has not been cashed within*  
24                  *one hundred and eighty (180) days, all funds represented by such uncashed*  
25                  *checks shall be redistributed to the Settlement Class Members who did cash*  
26                  *their checks in the same manner they were allocated and distributed during*  
27                  *the first disbursement.*

1           9.     Service Award.    In addition to the Individual Settlement Payment as a  
2           Settlement Class Member and his individual share of the Aggrieved Employee  
3           Payment, the Class Representative will apply to the Court for an award of not  
4           more than \$10,000.00 as the Service Award. Defendant will not oppose a  
5           Service Award of not more than \$10,000.00 for Class Representative. The  
6           Settlement Administrator shall pay the Service Award, either in the amount  
7           stated herein if approved by the Court or some other amount as approved by  
8           the Court, to Class Representative from the Gross Settlement Amount no later  
9           than fourteen (14) calendar days after the Funding Date. Any portion of the  
10          requested Service Award that is not awarded to the Class Representative shall  
11          be part of the Net Settlement Amount and shall be distributed to Settlement  
12          Class Members as provided in this Agreement. The Settlement Administrator  
13          shall issue an IRS Form 1099 — MISC to Class Representative for his Service  
14          Award. Class Representative shall be solely and legally responsible to pay  
15          any and all applicable taxes on his Service Award and shall hold harmless the  
16          Released Parties from any claim or liability for taxes, penalties, or interest  
17          arising as a result of the Service Award. Approval of this Settlement shall not  
18          be conditioned on Court approval of the requested amount of the Service  
19          Award. If the Court reduces or does not approve the requested Service Award,  
20          Class Representative shall not have the right to revoke the Settlement, and it  
21          will remain binding.

22          10.     Attorneys' Fees and Attorneys' Expenses. Defendant will not object to Class  
23          Counsel filing a motion for Attorneys' Fees not to exceed one-third of the  
24          Gross Settlement Amount (currently estimated to be \$128,333.33) and  
25          Attorneys' Expenses supported by declaration not to exceed Thirty Thousand  
26          Dollars (\$30,000.00). Any awarded Attorneys' Fees and Attorneys' Expenses  
27          shall be paid from the Gross Settlement Amount. Any portion of the requested  
28          Attorneys' Fees and/or Attorneys' Expenses that are not awarded to Class

Counsel shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Attorneys' Fees to Class Counsel from the Gross Settlement Amount no later than fourteen (14) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Attorneys' Fees, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. PAGA Payment. Twenty Thousand Dollars and Zero Cents (\$20,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$15,000.00) to the LWDA no later than fourteen (14) calendar days after the Funding Date. Twenty-five percent (25%) of the PAGA Payment (\$5,000.00) will be distributed to the Aggrieved Employees as described in this Agreement. For purposes of distributing the Aggrieved Employee Payment portion of the PAGA Payment to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. Claims Administration Expenses. The Settlement Administrator shall be paid for the actual costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Claims Administration Expenses is \$8,600.00. The Settlement Administrator shall be paid the Claims Administration Expenses no later than fourteen (14) calendar days after the Funding Date.



1           J.     Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with  
2           the Court a motion for order granting final approval and entering judgment, within  
3           twenty-eight (28) days following the expiration of the Response Deadline, which  
4           motion shall request final approval of the Settlement and a determination of the  
5           amounts payable for the Service Award, the Attorneys' Fees and Attorneys'  
6           Expenses, the PAGA Payment, and the Claims Administration Expenses. Plaintiff  
7           will provide Defendant with a draft of the motion at least five (5) business days prior  
8           to the filing of the motion to give Defendant an opportunity to propose changes or  
9           additions to the motion.

10           1.     Declaration by Settlement Administrator. No later than seven (7) days after  
11           the Response Deadline, the Settlement Administrator shall submit a  
12           declaration in support of Plaintiff's motion for final approval of this  
13           Settlement detailing the number of Notice Packets mailed and re-mailed to  
14           Class Members, the number of undeliverable Notice Packets, the number of  
15           timely Requests for Exclusion, the number of Notices of Objections received,  
16           the amount of the average Individual Settlement Payment and highest  
17           Individual Settlement Payment, the Claims Administration Expenses, and any  
18           other information as the Parties mutually agree or the Court orders the  
19           Settlement Administrator to provide.

20           2.     Final Approval Order and Judgment. Class Counsel shall present an order  
21           granting final approval of class action settlement to the Court for its approval,  
22           and judgment thereon, at the time Class Counsel files the motion for final  
23           approval.

24           N.     Cooperation. The Parties and their counsel will cooperate with each other and use  
25           their best efforts to implement the Settlement.

26           O.     Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,  
27           except such proceedings necessary to implement and complete the Settlement, pending  
28           the final approval fairness hearing to be conducted by the Court.

- 1       P.   Amendment or Modification. This Agreement may be amended or modified only by  
2       a written instrument signed by counsel for all Parties or their successors-in-interest.
- 3       Q.   Entire Agreement. Except for Plaintiff's individual unrelated claims, which are the  
4       subject of a separate settlement and settlement agreement, this Agreement and any  
5       attached Exhibit constitute the entire Agreement among these Parties, and no oral or  
6       written representations, warranties or inducements have been made to any Party  
7       concerning this Agreement or its Exhibit other than the representations, warranties and  
8       covenants contained and memorialized in this Agreement and its Exhibit.
- 9       R.   Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
10      represent they are expressly authorized by the Parties whom they represent to negotiate  
11      this Agreement and to take all appropriate Action required or permitted to be taken by  
12      such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
13      documents required to effectuate the terms of this Agreement. The persons signing  
14      this Agreement on behalf of Defendant represents and warrants that he/she is  
15      authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and  
16      warrants that he is authorized to sign this Agreement and that he has not assigned any  
17      claim, or part of a claim, covered by this Settlement to a third-party.
- 18      S.   Binding on Successors and Assigns. This Agreement shall be binding upon, and inure  
19      to the benefit of, the successors or assigns of the Parties, as previously defined.
- 20      T.   California Law Governs. All terms of this Agreement and any disputes shall be  
21      governed by and interpreted according to the laws of the State of California.
- 22      U.   Counterparts. This Agreement may be executed in one or more counterparts by  
23      facsimile, electronic signature, or e-mail, for purposes of this Agreement shall be  
24      accepted as an original. All executed counterparts and each of them shall be deemed  
25      to be one and the same instrument provided that counsel for the Parties to this  
26      Agreement shall exchange among themselves copies or originals of the signed  
27      counterparts. Any executed counterpart will be admissible in evidence to prove the  
28      existence and contents of this Agreement.

- 1 V. Court Filings. The Parties shall not object to any Court filings consistent with this  
2 Agreement.
- 3 W. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement  
4 is a fair, adequate and reasonable settlement of this Action and have arrived at this  
5 Settlement after extensive arms-length negotiations, taking into account all relevant  
6 factors, present and potential.
- 7 X. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with  
8 respect to the interpretation, implementation and enforcement of the terms of this  
9 Agreement and all orders and judgments entered in connection therewith, and the  
10 Parties and their counsel submit to the jurisdiction of the Court for purposes of  
11 interpreting, implementing and enforcing the settlement and all orders and judgments  
12 entered in connection with this Agreement.
- 13 Y. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,  
14 the Court shall first attempt to construe the provisions valid to the fullest extent  
15 possible consistent with applicable precedents so as to define all provisions of this  
16 Agreement valid and enforceable.
- 17 Z. No Unalleged Claims. Except for Plaintiff's individual unrelated claims, which are  
18 the subject of a separate filed action, settlement and settlement agreement, Plaintiff  
19 and Class Counsel represent that they do not currently intend to pursue any claims  
20 against the Released Parties, including, but not limited to, any and all claims relating  
21 to or arising from Plaintiff's employment with Defendant, regardless of whether Class  
22 Counsel is currently aware of any facts or legal theories upon which any claims or  
23 causes of action could be brought against Released Parties, including those facts or  
24 legal theories alleged in the operative complaint in this Action. The Parties further  
25 acknowledge, understand and agree that this representation is essential to the  
26 Agreement and that this Agreement would not have been entered into were it not for  
27 this representation.  
28

1 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class  
2 certification for purposes of this Settlement only.

3 BB. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the  
4 Released Class Claims and Released PAGA Claims have merit and give rise to liability  
5 on the part of Defendant. Defendant claims that the Released Class Claims and  
6 Released PAGA claims have no merit and do not give rise to liability. This Agreement  
7 is a compromise of disputed claims. Nothing contained in this Agreement and no  
8 documents referred to and no action taken to carry out this Agreement may be  
9 construed or used as an admission by or against the Defendant or Plaintiff or Class  
10 Counsel as to the merits or lack thereof of the claims asserted. Other than as may be  
11 specifically set forth herein, each Party shall be responsible for and shall bear their  
12 own attorney's fees and costs.

13 CC. No Public Comment. The Parties and their counsel agree that they will not issue any  
14 press releases, initiate any contact with the press, respond to any press inquiry, or have  
15 any communication with the press about the fact, amount or terms of the Settlement  
16 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any  
17 of its terms for any marketing or promotional purposes. Nothing herein will restrict  
18 Class Counsel from including publicly available information regarding this settlement  
19 in future judicial submissions regarding Class Counsel's qualifications and experience.  
20 Further, Class Counsel will not include, reference or use the Settlement Agreement for  
21 any marketing or promotional purposes, either before or after the motion for  
22 preliminary approval is filed.

23 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

24 DATED: 05/12/2025

Andrew Ellenberg-Wiley

Andrew Ellenberg-Wiley (May 12, 2025 19:36 PDT)

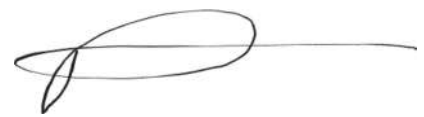
Andrew Ellenberg-Wiley

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28 IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

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05 / 09 / 2025

DATED: \_\_\_\_\_



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San Francisco AIDS Foundation

Peter Parisot

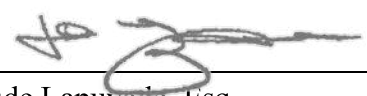
\_\_\_\_\_  
Printed Name  
Chief Legal Officer

\_\_\_\_\_  
Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 05/13/2025

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.  
Attorneys for Plaintiff and the Settlement Class  
Members

DATED: 05/13/2025

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay, Esq.  
Attorneys for Plaintiff and the Settlement Class  
Members

DATED: May 9, 2025

MESSNER REEVES, LLP

By: 

Kathleen Carter, Esq.  
Jeffrey Gillette, Esq.  
Attorneys for Defendant

# **EXHIBIT A**

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND  
FINAL HEARING DATE**

**(Ellenberg-Wiley v. San Francisco Aids Foundation, San Francisco County Superior Court Case No. CGC-  
23-609040) (“Action”)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE  
READ THIS NOTICE CAREFULLY.**

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |  |
|---|--|
| <b>Do Nothing and<br/>Receive a Payment</b>                         | <i>To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.<br/><b>Your estimated Individual Settlement Payment is: \$&lt;&lt; &gt;&gt;. See the explanation below.</b><br/>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.</i> |
| <b>Exclude Yourself</b>   | <i>If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive <b>no money from the Settlement.</b><br/>Instructions are set forth below.</i>   |
| <b>Object</b>   | <i>You may write to the Court about why you believe the settlement should not be approved.<br/>Directions are provided below.</i>  |

**1. Why did I get this Notice?**

*A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Francisco (the “Court”) has been reached between Plaintiff Andrew Ellenberg-Wiley (“Plaintiff” or “Class Representative”) and Defendant San Francisco Aids Foundation (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.***

***You have received this Class Notice because you have been identified as a member of the Class.***

*The “Class” is defined as:*

*All non-exempt employees who are or previously were employed by San Francisco Aids Foundation and performed work in California during the Class Period.*

*The “Class Period” is the period from September 13, 2019, to [blank].*

*This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.*

**2. What is this class action lawsuit about?**

On September 13, 2023, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Francisco, asserting causes of action for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 et seq.); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 516 and the applicable wage order); (6) Failure to Provide Wages When Due (Labor Code §§ 201, 202, 203); (7) Failure to Provide Accurate Itemized Statements (Labor Code § 226 and 226.2 et seq.); and (8) Failure to Reimburse Employees for Required Expenses (Labor Code § 2802). In order to facilitate the settlement, on September 11, 2023, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. The operative Complaint includes an additional cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698, et seq.]

Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative are owed, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On August 20, 2024, the Parties participated in an all-day mediation with Steven Rottman, Esq., a mediator of wage and hour class actions. The mediation concluded with a settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

### 3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$385,000.00). (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Settlement Class Members, Class Counsel’s Attorneys’ Fees and Attorneys’ Costs, Claims Administration Expenses, the PAGA Payment, and the Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- “Claims Administration Expenses”. Payment to the Settlement Administrator, estimated not to exceed \$8,600.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.
- “Attorneys’ Fees” and “Attorneys’ Expenses”. Payment to Class Counsel of Attorneys’ Fees of no more than 1/3 of the Gross Settlement Amount (currently \$128,333.33) and Attorneys’ Expenses of not more than \$30,000.00 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class



on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- “Service Award”. Service Award of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- “PAGA Payment”. A payment of \$20,000.00 relating to Plaintiff’s claim under the Private Attorneys General Act (“PAGA”), \$15,000.00 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) and the remaining \$5,000.00 will be distributed to Aggrieved Employees.
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Attorneys’ Fees, Attorneys’ Expenses, the Service Award, the PAGA Payment, and the Claims Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount, or “Settlement Shares” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). Settlement Class Members will be paid based on the number of workweeks worked during the Class Period. A “Workweek” is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed for at least a portion of one day by Defendant during the Class Period in California.
- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out of the Class Settlement. The PAGA Payment will be divided by the total number of PAGA pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of PAGA pay periods worked by each respective Aggrieved Employee during the PAGA Period. “Aggrieved Employee” means all non-exempt employees who are or previously were employed by San Francisco Aids Foundation and performed work in California during the PAGA Period. The PAGA Period means the period from September 11, 2022, to [blank].

***If the Settlement is approved by the Court, you will automatically be mailed a check for your individual payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.***

Tax Matters. Twenty percent (20%) of each individual Class Settlement payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Forty percent (40%) of each individual Class Settlement payment is allocated to interest and forty percent (40%) to penalties. No taxes will be withheld from the PAGA Payment paid to Aggrieved Employees. Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for penalty portion and interest portion of the individual Class Settlement payments. In addition, no taxes will be withheld from the PAGA Payment paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant’s counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The individual Class Settlement payments and Aggrieved Employee PAGA Payments made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as

well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

#### **4. What Do I Release Under the Settlement?**

Released Claims. Upon funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. "Released Class Claims" means all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint in the Action including, without limitation, claims for (1) unfair business practices; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods or pay a premium in lieu thereof; (5) failure to authorize and permit rest periods or pay a premium in lieu thereof; (6) failure to timely pay wages including at the time of termination/end of employment; (7) failure to furnish accurate itemized wage statements; (8) failure to reimburse employees for business expenses; and (9) claims for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, California Code of Civil Procedure section 1021.5, Civil Code sections 3287, 3289, and California Business and Professions Code section 17200 et seq. (arising from violations of the labor code listed above) or any applicable IWC Wage Order. Class Members do not release any claims that cannot be released by law, including, without limitation, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

The Released PAGA Claims shall be released as follows. Upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint in the Action and Plaintiff's PAGA Notice including, without limitation, claims for PAGA penalties arising from (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay wages including at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; and (8) claims for penalties under the Private Attorneys General Act for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, 2698, et seq., California Code of Civil Procedure section 1021.5, Civil Code sections 3287, 3289,) or any applicable IWC Wage Order.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

#### **5. How much will my payment be?**

*Defendant's records reflect that you have <<\_\_\_\_\_>> Workweeks worked during the Class Period (September 13, 2019, to [blank]).*

*Based on this information, your estimated Class Settlement Share is <<\_\_\_\_\_>>.*

*Defendant's records reflect that you have <<\_\_\_\_\_>> PAGA pay periods worked during the PAGA Period (September 11, 2022, to [blank]).*

*Based on this information, your estimated PAGA Payment as an Aggrieved Employee is <<\_\_\_\_\_>>.*

*If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than \_\_\_\_\_ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].*

#### **6. How can I get a payment?**

*To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.*

*The Court will hold a hearing on \_\_\_\_\_ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at [www.apexclassaction.com](http://www.apexclassaction.com).*

#### **7. What if I don't want to be a part of the Class Settlement?**

*If you do not wish to participate in the Class Settlement, you may exclude yourself from the Class Settlement or "opt out." **If you opt out, you will receive NO money from the Class Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Class Settlement or "opt out," if you are an Aggrieved Employee, you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee portion of the PAGA Payment.*

*To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than \_\_\_\_\_. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel. (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Ellenberg v. San Francisco AIDS Foundation*, San Francisco County Superior Court Case Number CGC-23-609040. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.*

*Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be*

rejected, and those Class Members will remain bound by the Settlement and the release described above.

## **8. How do I tell the Court that I would like to challenge the Settlement?**

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is **Ellenberg v. San Francisco Aids Foundation, San Francisco County Superior Court Case Number CGC-23-609040**. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

**Written objections must be delivered or mailed to the Settlement Administrator no later than** [REDACTED]. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

### **Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
5440 Morehouse Drive, Suite 3600  
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E-Mail: [jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

### **Counsel for Defendant:**

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### **Class Counsel:**

Shani O. Zakay, Esq.  
Zakay Law Group, APLC  
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Email: [shani@zakaylaw.com](mailto:shani@zakaylaw.com)

## **9. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at 00:00 AM/PM on [REDACTED], at the San Francisco County Superior Court, Department \_\_, located at [REDACTED] before Judge [REDACTED]. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them.

*The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.*

#### **10. How do I get more information about the Settlement?**

*You may call the Settlement Administrator at 1-800-355-0700 or write to **Ellenberg v. San Francisco Aids Foundation**, San Francisco County Superior Court Case Number CGC-23-609040, Settlement Administrator, 18 Technology Drive, Suite 164, Irvine, CA 92618 c/o Apex Class Action, LLC.*

*This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the administrator's website at [www.apexclassaction.com](http://www.apexclassaction.com).*

***PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.***

#### **IMPORTANT:**

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.*
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall redistribute the funds from such uncashed checks to the Settlement Class Members who cashed their original checks in the same manner that it distributed the original checks. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.*

|                         |  |
|-------------------------|--|
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| File name               | DRAFT_Class and P...(Final)_May 9.pdf    |
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## Document History



**05 / 09 / 2025**  
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IP: 172.56.47.67



**05 / 09 / 2025**  
19:05:52 UTC

Viewed by Peter Parisot (pparisot@sfaf.org)  
IP: 24.21.211.79



**05 / 09 / 2025**  
19:06:31 UTC

Signed by Peter Parisot (pparisot@sfaf.org)  
IP: 24.21.211.79



COMPLETED

**05 / 09 / 2025**  
19:06:31 UTC

The document has been completed.