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18 Attorneys for Plaintiff  
19 PETER R. GRAY, JR and the Putative Class.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

PETER R. GRAY, JR on behalf of himself and  
all others similarly situated,

Plaintiffs,

v.

BEVERAGES & MORE, INC. DBA BEVMO,  
a Delaware corporation,

Defendant.

Case No. CGC-09-493678

**AGREEMENT OF SETTLEMENT**

Dept: 304

Judge: Hon. Curtis E. A. Karnow

1 This Agreement of Settlement (the “Settlement Agreement” or “Settlement”) is made by  
2 and among individual and representative plaintiff Peter R. Gray, Jr. (“Gray” or “Plaintiff” or  
3 “Named Plaintiff”), on behalf of himself and, on the terms set forth herein, the Settlement Class,  
4 and defendant Beverages & More, Inc. (“BevMo” or “Defendant”). Gray and BevMo are each  
5 referred to herein as a “Party” and, collectively, as the “Parties.” Capitalized terms that are not  
6 otherwise defined in this Settlement Agreement have the meanings set forth in Section I herein.

### 7 8 **Claims of the Parties and Background of the Case**

9 A. On or about October 2, 2009, Plaintiff filed this action *Gray v. Beverages & More,*  
10 *Inc. DBA BevMo,* San Francisco Superior Court Case No. CGC-09-493678 (the “Action”) in the  
11 State of California, City and County of San Francisco. The complaint filed in the Action alleged  
12 that BevMo made misleading statements to consumers with respect to its 5 Cent Sale wine  
13 promotion (the “5 Cent Sale”) in violation of California Civil Code Section 1750 *et seq.*, California  
14 Business and Professions Code Section 17200 *et seq.*, and California Business and Professions  
15 Code Section 17500 *et seq.* The complaint sought, *inter alia*, declaratory and injunctive relief,  
16 restitution, damages and attorneys’ fees.

17 B. After briefing and argument with respect to a Demurrer and Motion to Strike filed by  
18 BevMo, as well as extensive settlement negotiations between the Parties, Plaintiff, on or about  
19 March 23, 2012, filed a First Amended Complaint in the Action (the “Amended Complaint”)   
20 which, *inter alia*, limited the class period alleged in the Action to sales made on or before February  
21 9, 2010 in light of certain modifications BevMo made to its advertising regarding the 5 Cent Sale as  
22 a result of the filing of the Complaint in this case, as described in more detail in Section II. E., *infra.*

23 C. Thereafter, the Parties engaged in discovery with respect to Plaintiff’s class  
24 allegations, Plaintiff filed a motion for class certification, and the Parties again engaged in  
25 settlement negotiations.

26 D. Plaintiff, by and through his counsel, has conducted an investigation of the facts,  
27 including by reviewing documents, sworn interrogatory responses and deposition testimony of  
28 Defendant, and has analyzed the relevant legal issues. While Plaintiff and his counsel believe that

1 the claims asserted in the Amended Complaint have merit, they also have examined the benefits to  
2 be obtained under the proposed Settlement and have considered the costs, risks and delays  
3 associated with the continued prosecution of this litigation and the likely appeals of any rulings in  
4 favor of either Plaintiff or Defendant, and taken into account the changes to its marketing that  
5 BevMo has made, and agrees to make permanent, relating to its 5 Cent Sales. Plaintiff desires to  
6 resolve the claims asserted in the Amended Complaint against the Defendant.

7 E. Defendant has conducted an investigation of the facts, including by reviewing  
8 documents, sworn interrogatory responses and deposition testimony of Plaintiff, and has analyzed  
9 the relevant legal issues. Defendant denies all liability with respect to any and all of the facts or  
10 claims alleged in the Amended Complaint. In particular, Defendant denies that its marketing with  
11 respect to its 5 Cent Sale has been in any way inconsistent with the requirements of Civil Code  
12 Section 1750 *et seq.*, Business and Professions Code Section 17200 *et seq.*, or Business and  
13 Professions Code Section 17500 *et seq.*, or otherwise misleading. Defendant also denies that  
14 Plaintiff's claims against BevMo can be adjudicated appropriately on a class basis. Defendant also  
15 has weighed the risks and potential costs of continued litigation of the Action against the benefits of  
16 the proposed Settlement. Defendant desires to resolve the claims asserted against it in the Amended  
17 Complaint by Plaintiff.

18 F. In order to avoid the expense, burden and delay of litigation, and without admitting  
19 or acknowledging any liability, the Parties to this Settlement Agreement now wish to effect a  
20 complete resolution and settlement of all of Plaintiff's claims in the Action, and all claims of  
21 similarly situated persons in California. The Parties freely and voluntarily enter into this Settlement  
22 Agreement for that purpose.

23 G. The Parties and their counsel believe that, in consideration of all the circumstances,  
24 and after vigorous, adversarial arm's length settlement negotiations between counsel, the proposed  
25 settlement embodied in this Settlement Agreement is fair, reasonable, adequate and in the best  
26 interests of the Settlement Class.

27 H. The Parties intend that the proposed settlement embodied in this Settlement  
28 Agreement resolves all claims and disputes between the Plaintiff, Settlement Class Members and

1 the Defendant in this action.

2 NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties as follows:

3  
4 **I. DEFINITIONS**

5 For purposes of the Settlement Agreement and all Exhibits thereto, the following terms shall  
6 have the meanings as set forth below:

7 **A. "Effective Date"** means the date three business days after the date the Judgment in  
8 the Action becomes "Final." As used in this Settlement Agreement, "Final" means the later of:  
9 (1) the expiration of the time for the filing or noticing of any appeal or motion for reconsideration;  
10 (2) the date of final affirmance of any appeals therefrom, including reargument of any such appeals;  
11 or (3) the expiration of the time for petitions for review or reconsideration, and, if review or  
12 reconsideration is granted, the date of final affirmance following review or reconsideration or the  
13 final dismissal of any appeals or proceedings on review.

14 **B. "Class Period"** means the period from October 21, 2005 through February 9, 2010.

15 **C. "Settlement Class"** means any natural person who, during the Class Period,  
16 purchased one or more two-bottle sets of wine pursuant to a BevMo 5 Cent Sale either (i) from a  
17 BevMo store located in the State of California or (ii) through BevMo's website and made payment  
18 from a billing address in the State of California. Excluded from the Settlement Class are the judge  
19 approving the Settlement and his or her immediately family, Defendant, any entities in which  
20 Defendant has a controlling interest or which have a controlling interest in Defendant, and the  
21 officers, directors, employees, affiliates and attorneys for Defendant.

22 **D. "Lead Class Counsel"** means:

23 Robert J. Stein III  
24 AlvaradoSmith  
25 A Professional Corporation  
26 1 MacArthur Place, Suite 200  
27 Santa Ana, California 92707  
28 Phone: (714) 852-6837  
Email: rstein.settlement@alvaradosmith.com

**E. "Settlement Class Member"** means anyone who falls within the definition of the

1 Settlement Class and who does not validly and timely elect exclusion from the Settlement Class  
2 under the conditions and procedures for exclusion as determined by the Court and described in the  
3 Notice of Pendency and Settlement of Class Action attached hereto as **Exhibit 1** (the "**Long Form**  
4 **Notice**").

5 **F. "Released Claims"** means any and all claims, rights, damages, losses, demands,  
6 obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts,  
7 liabilities, agreements, costs or expenses, of any nature whatsoever, ascertained or unascertained,  
8 suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of the Plaintiff  
9 and/or any and all Settlement Class Members that arise out of or relate to: (i) the Action or (ii) any  
10 marketing, advertising, promotional activity and/or representations made by the Defendant  
11 associated with any 5 Cent Sale occurring during the Class Period.

12 **G. "Released Parties"** means the Defendant and all of its past and present officers,  
13 directors, agents, servants, sureties, attorneys, employees, parents, associates, controlling or  
14 principal shareholders, general or limited partners or partnerships, subsidiaries, divisions, affiliates,  
15 insurers, and all successors or predecessors in interest, assigns, or legal representatives.

16 **H. "Unknown Claims"** means all claims arising out of any matter covered by the  
17 Released Claims which in the future are or may be found to be other than or different from the facts  
18 now believed to be true, so that each person or entity so affected shall be deemed to have expressly  
19 waived all of the rights and benefits of Section 1542 of the California Civil Code, which reads as  
20 follows:

21 **"Section 1542. Certain Claims Not Affected by General Release.**  
22 **A general release does not extend to claims which the creditor**  
23 **does not know or 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 settlement with the debtor."**

24 All persons or entities providing releases under this Settlement Agreement upon the Effective Date  
25 shall be deemed to have, and by operation of the Judgment in the Action shall have, waived any and  
26 all provisions, rights and benefits conferred by Section 1542 of the California Civil Code.

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1 **II. COVENANTS**

2 **A. Certification of the Settlement Class.**

3 1. For settlement purposes only, the Parties hereto agree that, as part of the  
4 Preliminary Approval Order (as defined in Section II(B) herein), the Court may make preliminary  
5 findings and enter an order granting provisional certification of the Settlement Class subject to final  
6 findings and ratification in the Judgment, and appointing both Plaintiff and Lead Class Counsel as  
7 representatives of the Settlement Class.

8 2. The Defendant does not consent to certification of the Settlement Class for  
9 any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement is  
10 terminated pursuant to its terms, or the Effective Date for any reason does not occur, the order  
11 certifying the Settlement Class, and all preliminary and/or final findings regarding the Court's  
12 provisional class certification order, shall be automatically vacated upon notice of same to the  
13 Court, and the Action shall proceed as though the Settlement Class had never been certified and as  
14 though such findings had never been made, without prejudice to any party to either request or  
15 oppose class certification on any basis.

16 **B. Entry of Preliminary Approval Order.** Promptly upon execution of the Settlement  
17 Agreement, the Parties shall apply to the Court for entry of an Order Preliminarily Approving  
18 Settlement and Providing for Notice substantially in the form attached as **Exhibit 2** hereto (the  
19 "**Preliminary Approval Order**");

20 1. Provisionally approving the terms of the Settlement Agreement;

21 2. Approving all forms of notice of the Settlement and ordering that notice be  
22 given substantially in the manner set forth in Section II(C) herein;

23 3. Finding that the requirements for provisional certification of the Settlement  
24 Class have been satisfied, appointing Plaintiff and Lead Class Counsel as representatives of the  
25 Settlement Class, as well as preliminarily approving the Settlement as being within the range of  
26 reasonableness such that notice thereof should be given to members of the Settlement Class;

27 4. Approving the form of judgment substantially in the form of **Exhibit 3** hereto  
28 (the "**Judgment**");

1           5.       Providing that all members of the Settlement Class who do not, in accordance  
2 with the terms of the Long Form Notice, file valid and timely requests for exclusion from the  
3 Settlement Class be bound by the Judgment dismissing the Action on the merits and with prejudice;

4           6.       Finding that the form and method of notice to be given in accordance with  
5 the terms of the Preliminary Approval Order constitutes the best notice practicable under the  
6 circumstances and constitutes valid, due and sufficient notice to all members of the Settlement  
7 Class, complying fully with the requirements of the California Civil Code and Code of Civil  
8 Procedure; the Constitution of the United States, and any other applicable law;

9           7.       Scheduling a hearing or hearings (collectively, the “**Settlement Hearing**”) to  
10 be held by the Court to consider and determine whether (1) the requirements for certification of the  
11 Settlement Class have been met; (2) whether the proposed settlement of the Action is in accordance  
12 with the terms set forth in the Settlement Agreement, including as part of the Settlement the  
13 payment of certain Lead Class Counsel’s attorneys’ fees and reimbursement of expenses, should be  
14 approved as fair, reasonable and adequate; and (3) whether the Judgment approving the Settlement  
15 and dismissing the Action on the merits and with prejudice against Plaintiff and Settlement Class  
16 Members should be entered;

17           8.       Providing that the Settlement Hearing may, from time to time and without  
18 further notice to the Settlement Class (except those Settlement Class Members who file timely and  
19 valid objections), be continued or adjourned by order of the Court;

20           9.       Providing a procedure for members of the Settlement Class to request  
21 exclusion from the Settlement Class and for filing papers in support of the Settlement with the  
22 Court;

23           10.      Providing that any objections by any Settlement Class Member to: (i) the  
24 certification of the Settlement Class and the proposed settlement contained in the Settlement  
25 Agreement and described in the Long Form Notice, including the provision for payment of  
26 attorneys’ fees and reimbursement of expenses, and/or (ii) entry of the Judgment, shall be heard and  
27 any papers submitted in support of said objections shall be considered by the Court at the  
28 Settlement Hearing only if, on or before a date (or dates) to be specified in the Preliminary

1 Approval Order, such objector serves a written objection on Lead Class Counsel by mail or email so  
2 that it is received by Lead Class Counsel no later than the date set by the Court; and

3 **11.** Establishing a date (or dates) by which the Parties shall file and serve all  
4 papers in support of the application for final approval of the Settlement, including the provision for  
5 payment of certain attorneys' fees and reimbursement of expenses, and/or in response to any valid  
6 and timely objections received by the designated counsel for the parties identified in the Settlement  
7 Notice.

8 **C. Notices to the Settlement Class.** BevMo shall give notice of the Settlement as  
9 follows:

10 **1. E-mail Notice.** Using the information in its computer database, BevMo shall  
11 communicate notice of the Settlement to Settlement Class Members by electronic mail substantially  
12 in the form of Exhibit 4 (the "**Email Notice**"). The Email Notice shall contain a link to the  
13 Settlement Website (as defined herein). The Parties recognize that BevMo's computer database may  
14 not have a current or accurate email address for each Settlement Class Member and agree that  
15 BevMo shall be under no obligation to independently attempt to update or correct its database, but  
16 shall provide on the Settlement Website a means for class members to update their contact  
17 information, which will promptly be included in the database.

18 **2. Publication Notice.** BevMo shall cause the notice of the Settlement to be  
19 published substantially in the form of Exhibit 5 hereto (the "**Publication Notice**"). The Publication  
20 Notice shall include the URL of the Settlement Website. The Publication Notice shall be published  
21 on two separate occasions in the form of 1/8 page black and white ads in the following publications:  
22 (1) Los Angeles Times; (2) San Francisco Chronicle; (3) Sacramento Bee; (4) Orange County  
23 Register; (5) San Diego Union Tribune; and (6) the Bay Area News Group of papers, which  
24 includes (a) San Jose Mercury News, (b) San Mateo County Times, (c) Contra Costa Times, (d)  
25 West County Times, (e) East County Times, (f) San Ramon Valley Times, (g) Oakland Tribune, (h)  
26 Vallejo Times-Herald, (i) Vacaville Reporter, (j) Marin Independent Journal, (k) Santa Cruz  
27 Sentinel, (l) The Argus/The Daily Review, and (m) Tri-Valley Times.  
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1                   3.     **Settlement Website.** BevMo shall set up a website (the “**Settlement**  
2 **Website**”) on which it shall post the Long Form Notice as well as: (1) a contact information update  
3 instructions substantially in the form of Exhibit 6 hereto (the “**Contact Information Update**  
4 **Instructions**”); and (2) a request for exclusion or opt-out form substantially in the form of Exhibit 7  
5 hereto (the “**Opt-Out Form**”). The Settlement Website will be made active no later than 60 days  
6 following entry of the Preliminary Approval Order, and shall remain active until 60 days after the  
7 Effective Date.

8                   4.     All costs of notice shall be borne by BevMo.

9                   **D.     The Judgment.** If, at or after the Settlement Hearing, the Settlement Agreement is  
10 approved by the Court, the Parties shall submit to the Court the Judgment:

11                   1.     Ratifying the certification of the Settlement Class and approving the  
12 Settlement Agreement, judging its terms to be fair, reasonable, and adequate and in the best  
13 interests of the Settlement Class Members, directing its consummation in accordance with its terms,  
14 and reserving continuing jurisdiction to implement, enforce, administer, effectuate, interpret,  
15 monitor and ensure compliance with the provisions of the Settlement Agreement and the Judgment;

16                   2.     Ordering the parties to carry out or complete the provisions of this Settlement  
17 Agreement;

18                   3.     Dismissing the Action as to the Defendant on the merits, with prejudice and  
19 without costs (except as otherwise provided herein) and releasing the claims of the Settlement Class  
20 Members as described in Section II(J) herein;

21                   4.     Barring and permanently enjoining the Settlement Class Members from  
22 prosecuting any action in state or federal court against BevMo and its predecessors, successors,  
23 shareholders, parents, subsidiaries, affiliates, present or former officers, directors, partners, insurers,  
24 employees, associates, agents, attorneys, representatives, heirs, successors, assigns, and  
25 administrators with respect to any and all individual or class claims to be released pursuant to  
26 Section II(J) herein;

27                   5.     Determining the Judgment to be final.

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**E. Making Permanent the Changes to Advertising Regarding the 5 Cent Sale.**

After the Action was filed, BevMo made two changes to its advertising regarding the 5 Cent Sale, which Plaintiff acknowledges addressed the issues raised in the Action, removed any doubt as to whether BevMo's advertising regarding the 5 Cent Sale complied with California law, and remedied his allegations that BevMo's representations misled or were likely to mislead consumers. *First*, BevMo moved the term "ClubBev" so that it was not immediately proximate to the price that the consumer must pay for the first bottle of wine sold as part of any two-bottle set sold during the 5 Cent Sale. This change is reflected in **Exhibit 8** hereto, which shows advertising used at the time the Action was filed and the change described in the preceding sentence. *Second*, BevMo modified the customer notice used in connection with the 5 Cent Sale to state that the price of the first bottle of wine sold as part of any two-bottle set sold during the 5 Cent Sale was an "undiscounted" price. This change is reflected in **Exhibit 9** hereto, which shows advertising used at the time the Action was filed and the change described in the preceding sentence. BevMo agrees that, for so long as it continues offering products as part of the 5 Cent Sale, its advertising will continue to (i) refrain from using the term "ClubBev" immediately proximate to the price that the consumer must pay for the first bottle of wine sold as part of any two-bottle set sold during the 5 Cent Sale, and (ii) identify in the customer notice/disclaimer that the price paid by the consumer for the first bottle of wine sold as part of any two-bottle set sold during the 5 Cent Sale is an "undiscounted" price (or a materially similar statement).

**F. Settlement Discount Coupon.**

**1. Automatic Eligibility for Discount Coupon.** As part of the consideration for the agreement to dismiss the Action as provided for in this Settlement Agreement, and for entry of the Judgment as provided for in Section II(D), BevMo shall make available to each Settlement Class Member in accordance with the procedures set forth in Section II(G) hereto, one coupon redeemable for a discount of \$1.00 on a new purchase from BevMo (each a "Discount Coupon" and collectively, "Discount Coupons") for each two-bottle set of wine that the Settlement Class Member purchased pursuant to a 5 Cent Sale during the Class Period.

1                   **2. Terms of Discount Coupons.** Discount Coupons can be redeemed in-store  
2 for a discount on any goods sold by BevMo up to one hundred eighty (180) days after the Discount  
3 Coupons are issued by BevMo. Discount Coupons have no cash value, are not transferable, and may  
4 be redeemed only by the owner of the ClubBev account number that appears on the Discount  
5 Coupon. Discount Coupons may be combined with one another. Discount Coupons cannot,  
6 however, be used with any other coupon (e.g., a promotional coupon) that is not a Discount Coupon  
7 issued pursuant to this Settlement. Discount Coupons cannot be used for online purchases, and  
8 cannot be applied to any prior purchases.

9                   **G. Claims Administration.** BevMo shall be responsible for reviewing its computer  
10 database and identifying Settlement Class Members and the number of Discount Coupons that each  
11 Settlement Class Member is entitled to receive. Within 60 days of the Effective Date, BevMo shall,  
12 subject to the limitations of this section, distribute by electronic mail all Discount Coupons required  
13 to be distributed by the terms of Section II(E) above. BevMo shall be obligated only to use the  
14 information in its computer database to identify Settlement Class Members who are to receive  
15 Discount Coupons and their email addresses, and shall be under no obligation to attempt to update  
16 or correct its computer database with respect to such information; *unless, however,* a Settlement  
17 Class Member updates his or her contact information with BevMo, in which case BevMo shall be  
18 obligated to use that electronic mail address in sending out Discount Coupons. A Settlement Class  
19 Member may update his or her contact information by following the Contact Information Update  
20 Instructions described in Section II(C)(3) above and Exhibit 5 hereto. BevMo shall bear all of the  
21 costs of claims administration process as set out in this Section II(G). BevMo shall maintain  
22 sufficient records such that Lead Class Counsel, on reasonable notice, can review BevMo's  
23 compliance with its obligations under this Section II(G); *provided, however,* that any such review  
24 shall be entirely at Lead Class Counsel's expense.

25                   **H. Attorneys' Fees To Lead Class Counsel And Payment To Class Representative.**

26                   **1. Attorneys' Fees Incurred in Prosecuting The Action.** The Parties agree  
27 that attorneys' fees and costs of up to \$296,000 incurred in prosecuting the Action are appropriate  
28 and should be approved by the Court. Lead Class Counsel states that he has already incurred fees

1 and costs substantially in excess of \$296,000 in prosecution this action, but has agreed that any fee  
2 petition he files will not seek reimbursement of fees, costs and expenses in excess of this amount.  
3 BevMo agrees to pay any award of attorneys' fees, costs and expenses approved by the Court up to  
4 \$296,000.

5           **2. Payment to the Named Plaintiff.** The Parties agree that payment to the  
6 Named Plaintiff in the amount of \$1,000 is appropriate and fair and should be approved by the  
7 Court. The Named Plaintiff sought out counsel to pursue this Action, spent considerable time  
8 himself in pursuing the Action, including having his deposition taken, and incurred substantial  
9 personal risks in pursuing the Action. The payment to the Named Plaintiff is in no way an  
10 acknowledgement by BevMo that the Named Plaintiff's actions were proper, that he was wronged  
11 in any respect, or that BevMo has any liability for any of the acts complained of in the Action.

12           **3. General Provisions.** The foregoing amounts will be paid by BevMo to Lead  
13 Class Counsel and the Class Representative within thirty (30) days of the Effective Date. BevMo  
14 agreed to the payment of such amounts after reaching agreement upon all other material terms of  
15 the Settlement Agreement. Defendant, its present and former officers, directors, shareholders,  
16 parent companies, subsidiaries, affiliated companies, employees, agents, attorneys, representatives,  
17 heirs, successors and assigns, shall not be liable to any person for any additional fees, costs or  
18 expenses of whatever kind or for whatever purpose (including taxes) in connection with the Action.

19           **I. Opt-Out List.** Within five business days after the deadline established by the Court  
20 in the Preliminary Approval Order for members of the Settlement Class to request exclusion from  
21 the Settlement Class, Lead Class Counsel shall furnish to Defendant's counsel a complete list of all  
22 timely and valid requests for exclusion received by Lead Class Counsel (the "Opt-Out List").

23           **J. Releases.** In accordance with the provisions of the Judgment, for good and sufficient  
24 consideration, the receipt of which is hereby acknowledged, upon the Effective Date the Plaintiff  
25 and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall  
26 have, fully, finally, and forever released, relinquished and discharged all Released Claims  
27 (including Unknown Claims) against the Released Parties.  
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1           **K. Use of Settlement Agreement.** The Parties agree that to the fullest extent permitted  
2 by law, neither the Settlement Agreement nor the settlement, nor any act performed nor document  
3 executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (1) is or may  
4 be deemed to be or may be used as an admission of, or evidence of, the validity of any claim of the  
5 Settlement Class Members; or (2) is or may be deemed to be or may be used as an admission of, or  
6 evidence of, any wrongdoing, fault, omission, or liability of the Defendant in any proceeding in any  
7 court, administrative agency or other tribunal. Nothing in this Section II(K) shall preclude any party  
8 hereto from using the Settlement Agreement, the Judgment, or any act performed or document  
9 executed pursuant thereto in a proceeding to consummate, monitor or enforce the Settlement  
10 Agreement, the terms of the Settlement or the Judgment.

11           **L. Settlement Conditioned on Final Judgment.** This Settlement Agreement is  
12 conditioned upon the Judgment in the Action becoming Final. If the Judgment is reversed or  
13 vacated, or if the Judgment does not become Final for any other reason, this Settlement Agreement  
14 shall be terminated as provided in Section II(Q) herein. If the Judgment is modified in any manner  
15 which limits the scope of releases given to the Released Parties as provided under the terms of this  
16 Settlement Agreement or which alters the Defendant's obligations as provided under the terms of  
17 this Settlement Agreement, Defendant shall have the right either to affirm this Settlement  
18 Agreement as modified, or to terminate this Settlement Agreement as provided in Section II(Q)  
19 herein.

20           **M. Best Efforts.** Upon the entry of the Preliminary Approval Order, the Parties agree to  
21 use their best efforts to implement the Settlement or comply with, confirm the bases for or  
22 effectuate the terms of this Settlement Agreement. The Parties agree to cooperate and use their best  
23 efforts to the extent necessary to effectuate and implement all terms and conditions of the  
24 Settlement Agreement.

25           **N. Publicity.** In order to ensure that all information provided to the Settlement Class  
26 Members regarding the terms and conditions of this Settlement is content neutral and has been  
27 approved by the Court in substance, the Parties agree that they shall not issue any statements for  
28 publication or public comment regarding the terms and conditions of the Settlement beyond

1 disseminating information provided either in this Settlement Agreement and any exhibit thereto or  
2 in the Settlement Notice until after the Settlement Hearing. Notwithstanding the agreement  
3 contained in this provision, Defendant retains, at all times, its right to deny liability. Moreover,  
4 Lead Class Counsel and all members and/or employees of their respective firms agree that they will  
5 not provide any notice or announcements about the Settlement prior to preliminary approval by the  
6 Court of this Settlement Agreement.

7       **O. Jurisdiction.** The Parties agree that, consistent with California Code of Civil  
8 Procedure Section 664.6, the San Francisco Superior Court (the "Court") shall have exclusive and  
9 continuing jurisdiction over the parties hereto and the implementation, effectuation, interpretation,  
10 administration, monitoring and enforcement of this Settlement Agreement and all provisions thereof  
11 (including the permanent changes to BevMo's advertising described in Section E above) with  
12 respect to all parties hereto and all beneficiaries hereof, including Plaintiff, Lead Class Counsel,  
13 Defendant, all Settlement Class Members and Released Parties. The Parties further agree that the  
14 Court shall have the authority to impose sanctions, including without limitation, the authority to  
15 impose injunctive relief, in the event of non-compliance with this section by any party or their  
16 counsel. Any and all disputes, requests or petitions regarding or arising out of the enforcement,  
17 construction, administration or interpretation of the Settlement Agreement, any provisions of the  
18 Settlement Agreement or the Judgment in the Action, must be made, if at all, to this Court by  
19 motion to the Court.

20       **P. Binding Effect.** This Settlement Agreement shall be binding upon each of the Parties  
21 hereto, their successors, heirs, assigns, and personal representatives, and upon all other persons  
22 claiming any interest in the subject matter hereto through any of the Parties hereto, including  
23 Plaintiffs and any Settlement Class Member.

24       **Q. Disapproval of Settlement.** If this Settlement Agreement is not approved by the  
25 Court (or, in the event of appeal, any appellate court) in substantially its present form, the Judgment  
26 does not become Final, or the Settlement Agreement is terminated in accordance with its provisions,  
27 the parties hereto shall be restored to their respective positions as of the date of this Settlement  
28 Agreement. The terms and provisions of the Settlement Agreement shall at that time have no further

1 force and effect with respect to the Parties and, to the extent permitted by law, shall not be used in  
2 any action or proceeding for any purpose. Any Judgment entered in accordance with the terms of  
3 the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Any order of the Court  
4 certifying the Settlement Class pursuant to Section II(A) herein shall be vacated, without prejudice  
5 to Plaintiff's right to proceed with its motion to certify a class and without prejudice to Defendant's  
6 right to oppose such certification.

7 **R. No Release of Obligations Created by This Settlement Agreement.** The Parties  
8 expressly understand and agree that, by entering into this Settlement Agreement, none of the Parties  
9 is releasing any other Party from performance of its obligations under this Settlement Agreement.

10 **S. Applicable Law.** The Settlement Agreement shall be governed by and interpreted  
11 according to the laws of the State of California.

12 **T. Entire Agreement.** This Settlement Agreement represents the entire agreement  
13 between the Parties relating to the subject matter hereof, and supersedes any prior agreements or  
14 understandings between them. The Settlement Agreement may be amended or modified only by a  
15 written instrument, signed by an authorized representatives of each of the Parties hereto with, where  
16 required by law, the approval of the Court.

17 **U. Materiality of Exhibits.** All of the Exhibits to the Settlement Agreement are  
18 material and integral parts hereof.

19 **V. Waiver of Breach.** The waiver by one Party of any breach of the Settlement  
20 Agreement by any other Party shall not be deemed a waiver of any prior or subsequent breach of the  
21 Settlement Agreement.

22 **W. Authority of Signatories.** Each signatory on behalf of a Party to the Settlement  
23 Agreement warrants and represents that he or she is a duly authorized representative of that Party,  
24 with full power and authority to agree to the Settlement Agreement, and all terms herein, on behalf  
25 of that Party.

26 **X. Mistake.** Each of the Parties to the Settlement Agreement has investigated the facts  
27 pertaining to it to the extent each party deems necessary. In entering into this Settlement  
28

1 Agreement, each party assumes the risk of mistake with respect to such facts. This Settlement  
2 Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

3 **Y. Construction.** This Settlement Agreement has been reviewed by Plaintiff and  
4 BevMo and their respective attorneys, and each have had full opportunity to negotiate the contents  
5 of this Settlement Agreement. Plaintiff and BevMo waive any common law or statutory rule of  
6 construction that ambiguity should be construed against the drafter of this Settlement Agreement,  
7 and agree that the language in all parts of this Settlement Agreement shall in all cases be construed  
8 as a whole, according to its fair meaning. Headings or titles of provisions are merely for  
9 convenience, and should not be construed to limit, expand, or modify in any way the actual  
10 language in each section or subsection.

11 **Z. Effectuation of Intent and Purposes.** Each Party agrees to execute any and all  
12 documents necessary to effectuate the intent and purposes of this Settlement Agreement.

13 **AA. Reasonable Extensions.** Without further order of the Court, the Parties hereto may  
14 agree to reasonable extensions of time to carry out any of the provisions of this Settlement.

15 **BB. Notices to Counsel or to Defendant.** All notices, requests, demands and other  
16 communications required or permitted to be given pursuant to this Settlement Agreement to  
17 Counsel of the Parties or to Defendant shall be in writing, and shall be delivered to either Lead  
18 Class Counsel or BevMo, as required herein<sup>1</sup>, by First Class U.S. Mail, postage prepaid or by email  
19 to the following addresses:

20 **Lead Class Counsel:**

21 Robert J. Stein III, Esq.  
22 ALVARADOSMITH,  
23 A Professional Corporation  
24 1 MacArthur Place, Suite 200  
25 Santa Ana, CA 92707  
26 rstein.settlement@alvaradosmith.com

**BevMo:**

Daniel Carter  
Chief Financial Officer  
Beverages & More, Inc.  
1401 Willow Pass Road, Suite 900  
Concord, CA 94520  
carterd@bevmo.com

with copy to:

27 <sup>1</sup> For avoidance of doubt, any objector who wishes to object to the Settlement need only  
28 deliver his or her objection to Lead Class Counsel (and not to BevMo) pursuant to Section II.B.10  
of this Settlement Agreement.



Douglas A. Winthrop, Esq.  
Arnold & Porter LLP  
Three Embarcadero Center, 10<sup>th</sup> Fl.  
San Francisco, CA 94111  
douglas.winthrop@aporter.com

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4       **CC. Counterparts.** This Settlement Agreement may be executed in one or more  
5 counterparts. All executed counterparts and each of them together shall constitute one and the same  
6 instrument. Counsel for parties to the Settlement Agreement shall exchange among themselves  
7 copies of the original signed counterparts, and a complete set of original signed counterparts shall  
8 be filed with the Court.

9       **DD. Finality.** This Settlement Agreement is intended to be Final and binding among the  
10 Parties, and is further intended to be a full and final accord and satisfaction between each of them.  
11 Defendant and Plaintiff each rely on the finality of this Settlement Agreement as a material factor  
12 inducing that party's execution of this Settlement Agreement.

13       **EE. Advice of Counsel.** All Parties acknowledge that they have read and understand and  
14 consent to the terms of this Settlement Agreement; that they have been advised by their respective  
15 legal counsel with respect thereto; that they understand and acknowledge the significance and  
16 consequences of this Settlement Agreement and each of the terms thereof, including (without  
17 limitation) the releases set forth in Section II(J) herein; that they have agreed thereto knowingly and  
18 voluntarily; and that they have not relied upon any representation, declaration, promise or  
19 inducement other than as set forth in this Settlement Agreement.

20  
21  
22 Dated: December \_\_, 2014

\_\_\_\_\_  
PETER R. GRAY, JR.

23  
24  
25 Dated: December 23, 2014

ALVARADO SMITH, A Professional Corporation  
Lead Class Counsel

26  
27 By: 

28 Print Name: ROBERT J. STERN

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Dated: December 18, 2014

BEVERAGES & MORE, INC.,  
Defendant

By: *Daniel T. Carter*

Print Name: DANIEL T. CARTER  
EXECUTIVE VICE PRESIDENT

Its: \_\_\_\_\_

**EXHIBIT 1**

**LONG FORM NOTICE**

**(REVISED PER COURT ORDER DATED JANUARY 16, 2015)**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO**

PETER R. GRAY, JR *et al.*,  
Plaintiffs,  
v.  
BEVERAGES & MORE, INC. DBA BEVMO,  
Defendant.

Civ. No. CGC-09-493678

**NOTICE OF PENDENCY AND  
SETTLEMENT OF CLASS ACTION**

**TO: ANY NATURAL PERSON WHO, FROM OCTOBER 21, 2005 THROUGH FEBRUARY 9, 2010 (THE "CLASS PERIOD"), PURCHASED ONE OR MORE TWO-BOTTLE SETS OF WINE AT BEVERAGES & MORE ("BEVMO") PURSUANT TO A BEVMO "5 CENT SALE" EITHER (1) FROM A BEVMO STORE LOCATED IN THE STATE OF CALIFORNIA OR (2) THROUGH BEVMO'S WEBSITE AND MADE PAYMENT FROM A BILLING ADDRESS IN THE STATE OF CALIFORNIA, BUT EXCLUDING THE JUDGE ASSIGNED TO THIS MATTER AND HIS IMMEDIATELY FAMILY, DEFENDANT, ANY ENTITIES IN WHICH DEFENDANT HAS A CONTROLLING INTEREST OR WHICH HAVE A CONTROLLING INTEREST IN DEFENDANT, AND THE OFFICERS, DIRECTORS, AFFILIATES AND ATTORNEYS FOR DEFENDANT (THE "SETTLEMENT CLASS").**

**PLEASE READ THIS NOTICE IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION.**

If you purchased one or more two-bottle sets of wine at BevMo pursuant to a 5 Cent Sale during the Class Period, you could get a payment in the form of one or more Discount Coupons from a class action settlement (the "Settlement"). The Settlement website is [www.#####.com](http://www.#####.com).

- If approved by the Court, the Settlement will provide: (1) permanent changes to BevMo's marketing practices relating to its 5 Cent Sales; (2) to each person that BevMo's computer records identify as a member of the Settlement Class ("Settlement Class Members"), one (1) one-dollar (\$1.00) Discount Coupon for each two-bottle set of wine purchased pursuant to a 5 Cent Sale during the Class Period; and (3) up to \$296,000 in attorneys' fees, expenses and costs, and a \$1,000 award to Plaintiff Peter R. Gray, Jr. (the "Named Plaintiff"), and any taxes. Information about how Settlement Class Members can obtain Discount Coupons is below.
- Attorneys for the Named Plaintiff ("Lead Class Counsel") state that they have incurred in excess of \$425,000 in attorney's fees, costs and expenses. They have agreed to limit their request for fees costs and expenses, which must be approved by the Court, to \$296,000. Lead Class Counsel for the Named Plaintiff also intends to ask the Court to award the Named Plaintiff \$1,000 as an award for his time spent on the lawsuit. Those amounts, if approved by the Court, will be paid by BevMo, and will not reduce the amount of relief available to class members.
- The Settlement resolves a lawsuit as to whether BevMo allegedly made misleading statements to California consumers with respect to its 5 Cent Sale wine promotion in violation of California Civil Code Section 1750 *et seq.*, California Business and Professions Code Section 17200 *et seq.*, and California Business and Professions Code Section 17500 *et seq.* BevMo denies the allegations in the lawsuit and denies any wrongdoing and no court has decided that BevMo did anything wrong.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<p><b>DO NOTHING AND RECEIVE BENEFIT</b></p>	<p>If the Court orders payments to Settlement Class Members, and if BevMo's computer records show you are a Settlement Class Member, BevMo will automatically email you one (1) one-dollar Discount Coupon for each two-bottle set of wine you purchased pursuant to a 5 Cent Sale from October 21, 2005 through February 9, 2010. BevMo will use the email address it has on file for you.</p> <p>You will also give up your right to be part of any other lawsuit against BevMo about the claims in this case.</p>
<p><b>UPDATE YOUR EMAIL ADDRESS NO LATER THAN {#####}</b></p>	<p>If you are a Settlement Class Member and you believe your email address in BevMo's database is out of date or incorrect, you must update your email address no later than {#####} to receive one or more Discount Coupons. You can update your contact information at BevMo.com or by calling 1-877-77BEVMO during BevMo's business hours.</p>
<p><b>OBJECT NO LATER THAN {#####}</b></p>	<p>Submit a written objection explaining why you do not like the Settlement and think it should not be approved. You must send your objection to Lead Class Counsel by mail or email so that it is received by Lead Class Counsel no later than {#####}, who will then file it with the Court for you. If you submit an objection, you may also speak at the Court's Final Approval Hearing to explain your position. You are not required to attend the hearing, though. The Final Approval Hearing will take place on {#####} at {#####}.</p>
<p><b>EXCLUDE YOURSELF NO LATER THAN {#####}</b></p>	<p>Get no payment in the form of one or more Discount Coupons. This is the only option that allows you to be a part of any other lawsuit against BevMo about the legal claims in this case.</p>

These rights and options are explained in more detail below.

**INQUIRIES**

Please do not contact the Court regarding this notice ("Notice"). All inquiries concerning this Notice, or any other questions by Settlement Class Members, should be directed to **Lead Class Counsel**:

Robert J. Stein III  
 ALVARADOSMITH, APC  
 1 MacArthur Place, Suite 200  
 Santa Ana, CA 92707

Tel: (714) 852-6837  
rstein.settlement@alvaradosmith.com

## COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT

### **1. What is the purpose of this notice?**

This notice has been issued pursuant to an Order of the Superior Court of the State of California in San Francisco County. The purpose of this notice is to inform you of the proposed Settlement of this class action litigation (the "Action"). It is also to inform you of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement at what is called a "Final Approval Hearing." This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and the Action.

### **2. What is this lawsuit about?**

The lawsuit is known as *Gray v. Beverages & More Inc.*, Civ. No. CGC-493678, and the Court in charge of the case is the Superior Court of the State of California in San Francisco County (the "Court").

BevMo periodically holds 5 Cent Sale wine promotions in California in which consumers can buy one bottle of wine and get a second bottle of wine for five cents. To participate in a 5 Cent Sale, a consumer must provide evidence of membership in BevMo's rewards program, called ClubBev.

The Action alleges that from October 1, 2005 through February 9, 2010, BevMo made misleading statements to California consumers about the 5 Cent Sale, which allegedly caused consumers to believe they were receiving a larger discount than they were, in fact, receiving, in violation of several of California's consumer protection laws, including Civil Code Section 1750 *et seq.* and Business & Professions Code Sections 17200 *et seq.* and 17500 *et seq.* The Named Plaintiff sought, among other things, declaratory and injunctive relief, restitution, damages, and attorneys' fees. The Named Plaintiff has estimated that Class Members experienced damages in the amount of approximately \$5.00 per purchase of a two-bottle set of wine.

BevMo denies the allegations in the Action, and denies any wrongdoing. In particular, BevMo denies that its marketing with respect to its 5 Cent Sale has been in any way misleading or inconsistent with the requirements of California's consumer protection laws. BevMo also denies that the Named Plaintiff's claims can be adjudicated appropriately on a class basis.

### **3. Why is this a class action?**

In a class action, one or more individuals and/or entities, called Named Plaintiffs, sue on behalf of all individuals and/or entities that have similar claims. All of these individuals and/or entities are referred to collectively as a class, and each individual or entity is known as a class member. One court resolves all issues for all class members, except for those class members who exclude themselves from the class.

### **4. Why did the parties agree to the proposed settlement?**

Each party has investigated the facts of this case by obtaining, reviewing, and analyzing information from the other party regarding the allegations in the Action.

The Named Plaintiff and BevMo do not agree regarding the merits of the Named Plaintiff's allegations with respect to liability, or with respect to the amount of money (if any) that would be recoverable by the Settlement Class if the Named Plaintiff were to prevail at trial. The issues on which the Named Plaintiff and BevMo disagree include: (1) whether BevMo violated California's consumer protection laws; (2) whether a class could legally be certified by the Court if the parties did not settle; and (3) the amount of monetary relief (if any) to which Settlement Class Members would be entitled.

This matter has not gone to trial and the Court has not decided in favor of either the Named Plaintiff or BevMo. Instead, the Named Plaintiff and BevMo have agreed to settle the Action.

The parties have negotiated the terms of an Agreement of Settlement (the "Settlement Agreement") in the Action, which is on file with the Court. The Settlement Agreement was reached only after arm's-length negotiations between the parties, who were represented by separate counsel with extensive experience and expertise in class action litigation. During the negotiations, both parties had a clear view of the strengths and weaknesses of their respective claims and defenses.

Although BevMo vigorously denied, and continues to deny, any wrongdoing or liability regarding the Named Plaintiff's allegations, BevMo has agreed to settle the Action to avoid the expense, risk, and inconvenience of a trial on the merits and any subsequent appeals, and to put to rest and finally terminate the Action and all Released Claims (as defined below in the response to Question No. 5).

Based on a thorough analysis of the facts and the applicable law, and after taking into account the material benefits afforded to the Settlement Class through settlement of this Action, and the risk, delay, and expense of a trial on the merits against BevMo and any subsequent appeals, the Named Plaintiff and Lead Class Counsel also concluded that a settlement of the Action on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interest of all Settlement Class Members.

#### **5. What are the basic terms of the proposed settlement?**

The proposed Settlement consists of the following elements.

- Permanent Changes to Advertising Regarding the 5 Cent Sale. After the Action was filed, BevMo made certain changes to its advertising regarding the 5 Cent Sale. In the Settlement Agreement, BevMo agrees that, for as long as it continues offering products as part of the 5 Cent Sale in California, its advertising will continue to reflect these changes.
- Settlement Discount Coupons. Using the customer information in its database, BevMo will send to each Settlement Class Member, by email, a coupon redeemable for a discount of \$1.00 on a new purchase from BevMo (each a "Discount Coupon" and collectively "Discount Coupons") for each two-bottle set of wine that the Settlement Class Member purchased pursuant to a 5 Cent Sale during the Class Period.
- Terms of Discount Coupons. Discount Coupons can be redeemed in store for a discount on any goods sold by BevMo up to one hundred eighty (180) days after they are issued by BevMo. Discount Coupons have no cash value, are not transferable, and may be redeemed only by the owner of the ClubBev account number that appears on the Discount Coupon. Discount Coupons can be combined with one another, but they cannot be used with any other coupon (e.g., a promotional coupon) that is not a Discount Coupon provided pursuant to the Settlement. Discount Coupons cannot be used for online purchases, and cannot be applied to any prior purchases. If coupons are used to purchase alcoholic beverages, coupons cannot cover the full

price of the purchase; in such cases, coupons can at most cover the dollar amount, rounded down, with the purchaser responsible for paying the remaining charge.

- BevMo to Bear Costs of Administration. BevMo will bear all costs incurred with respect to providing notices to Settlement Class Members and administering the Settlement.
- BevMo to Pay Attorneys' Fees and Costs. Lead Class Counsel state that they have incurred costs, expenses and attorney's fees in excess of \$425,000, however, they have agreed to limit any request they make to the Court for an award of attorneys' fees and costs incurred in prosecuting this lawsuit to \$296,000. The Named Plaintiff also intends to ask the Court to award him \$1,000 as an award for his time spent on the lawsuit. Those amounts, if approved by the Court, will be paid by BevMo, and will not reduce the amount of relief available to class members.
- Settlement Class Members To Release Claims Against BevMo. If the Settlement Agreement is finally approved by the Court, the Court will enter the final Judgment dismissing with prejudice all "Released Claims" against all "Released Parties."
  - "Released Claims" means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including "Unknown Claims" (as defined herein), the Plaintiff and/or any and all Settlement Class Members that: (a) arise out of the Action, or (b) relate to any marketing, advertising, promotional activity and/or representations made by the Defendant associated with any 5 Cent Sale during the Class Period, against any Released Party.
  - "Released Parties" means BevMo and all of its past and present officers, directors, agents, servants, sureties, attorneys, employees, parents, associates, controlling or principal shareholders, general or limited partners or partnerships, subsidiaries, divisions, affiliates, insurers, and all successors or predecessors in interest, assigns, or legal representatives.
  - "Unknown Claims" means all claims arising out of any matter covered by the Released Claims, which in the future are or may be found to be other than or different from the facts now believed to be true, so that each person or entity so affected shall be deemed to have expressly waived all of the rights and benefits of Section 1542 of the Civil Code, which reads as follows:

**Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or 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.**

- All persons or entities providing releases under the Settlement Agreement, including all Settlement Class Members, upon the date the Judgment becomes "Final" (as defined in the Settlement Agreement) shall be deemed to have, and by operation of the Judgment in the Action shall have, waived any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code. All persons or entities providing releases under the Settlement Agreement may hereafter discover facts other than or different from those which he, she or it now knows or believes to be true with respect to the subject



matter of the Released Claims, but such person or entity upon the Judgment becoming final shall be deemed to have, and by operation of the Judgment in the Action shall have, fully, finally and forever settled and released any and all such claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

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

If BevMo's computer records identify you as a Settlement Class Member, BevMo will automatically email to your email address on file with BevMo one (1) one-dollar Discount Coupon for each two two-bottle set of wine you purchased from BevMo in California pursuant to a 5 Cent Sale during the Class Period. If your email address has changed, or if you are not sure if BevMo has your correct email address, you can update your contact information online at BevMo.com or by calling BevMo at 1-877-77BEVMO. Detailed instructions to update your contact information are at [www.#####.com](http://www.#####.com).

**7. How and when will the Court decide whether to approve the settlement?**

A settlement approval hearing (the "Final Approval Hearing") will be held before the Honorable Curtis E. A. Karnow, Judge of the Superior Court of the State of California, County of San Francisco, 400 McAllister Street, Department 304, San Francisco, California on {#####}, 2015 at {#####} {##}.m. Pacific Time to determine: (1) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class pursuant to California Civil Code Section 1781 and California Rules of Court, Rule 3.769, and should be approved by the Court; (2) whether a Judgment as provided for in the Settlement Agreement should be entered; (3) whether to award Lead Class Counsel their requested attorneys' fees and reimbursement of expenses; and (4) whether to award the Named Plaintiff his requested incentive payment. The Court may continue or adjourn the Final Approval Hearing without further notice.

**8. What are my rights and obligations to participate in the approval hearing?**

Any Settlement Class Member may enter an appearance with the Court in this case individually or through a lawyer he or she retains. If Settlement Class Members do not enter an appearance, they will be represented by Lead Class Counsel.

Any Settlement Class Member who wishes to make a written objection to the Settlement or to any aspect thereof must mail or email such objection so that it is received by Lead Class Counsel on or before {###}, 2014, at the postal or email address provided in this notice

Any Settlement Class Member who does not make an objection in the manner provided in this Notice will be deemed to have waived such objection and will forever be foreclosed from making any objection to the proposed Settlement set forth in the Settlement Agreement or any aspect thereof, unless otherwise ordered by the Court. Any Settlement Class Member who submits a timely objection may speak to the Judge at the Final Approval Hearing to explain his or her objection. However, if you file an objection, you are not required to appear at the Final Approval Hearing. The Court will consider your written objection even if you do not appear.

Any written objection must indicate the case name (*Gray v. Beverages & More Inc.*, Civ. No. CGC-493678) and also include the following information: (1) name, address, and telephone number of the Settlement Class Member; (2) all grounds for the objection, including any legal support the Settlement Class Member or his or her counsel wish to assert; (3) if represented by counsel, the name, address, and telephone number of all counsel who represent the Settlement Class Member; (4) a statement confirming whether the Settlement Class Member or counsel plan to appear at the Final Approval Hearing; (5) the name, address, and telephone number of any counsel that will appear at the Final Approval Hearing; and (6) the number of times the Settlement Class Member and his or her attorney (if applicable) have filed an objection to a class action settlement in the previous five years and the identity of the case and the nature and outcome of each objection.

**9. What am I giving up to get relief as a Settlement Class Member?**

Unless you exclude yourself, you will remain in the Settlement Class. That means that if the Settlement is approved by the Court, you and all Settlement Class Members will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) all claims against BevMo and the other Released Parties (as defined above in the response to Question No. 5) in connection with your purchase of one or more two-bottle sets of wine from BevMo in California pursuant to a 5 Cent Sale during the Class Period, except that you do not release the Released Parties from any claim or action to enforce the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself, it also means you will accept one or more Discount Coupons as the sole recovery you will receive in connection with your purchase of a two-bottle set of wine from BevMo in California pursuant to a 5 Cent Sale during the Class Period. If you do not exclude yourself from the Settlement you will be considered to have agreed to the release of claims unless you exclude yourself from the Settlement by following the instructions in the answer to Question No. 10 below.

Also, if you previously filed a timely, valid request for exclusion (an "Opt-Out Form"), then you are not a member of the Settlement Class.

**10. How do I get out of the Settlement?**

If you do not want to be part of this Settlement, and you want to keep the right to sue or continue to sue BevMo on your own based on the legal claims raised in this Action, then you must take steps to get out of the Settlement. This is called excluding yourself from—or "opting out" of—the Settlement. To exclude yourself from the Settlement, you must send a letter or email to Lead Class Counsel stating you want to be excluded as a Settlement Class Member in the lawsuit entitled *Gray v. Beverages & More Inc.*, Civ. No. CGC-493678, or you can submit an online Opt-Out Form at the website [www.#####.com](http://www.#####.com). Be sure to include your name, address and telephone number. Opt-Out Forms submitted by email or via the settlement website must be submitted on or before {#####}. Opt-Out Forms submitted by mail must be postmarked no later than {#####} and sent to Lead Class counsel at the address in this Notice.

You cannot exclude yourself by telephone. If you properly exclude yourself, you will not receive a settlement payment in the form of a Discount Coupon, you cannot object to the Settlement, and you will not be legally bound by anything that happens in this Action.

**11. If I do not exclude myself, can I sue BevMo for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue BevMo for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately, since you may have to exclude yourself from this Settlement Class to continue your own lawsuit.

**12. Do I have a lawyer in this case?**

Yes. The Court appointed lawyers to represent you and the other Settlement Class Members. These lawyers are known as plaintiff's counsel, and in this notice they are also called Lead Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. Individuals who choose to opt out of the settlement will not be represented by Lead Class Counsel.

**13. How will the lawyers be paid?**

Lead Class Counsel have spent time and money litigating this Action on a contingent fee basis. That means they have paid for the expenses of the litigation themselves with the expectation that if they are successful in obtaining relief for a class of persons, they will receive attorneys' fees and be reimbursed for their litigation expenses by BevMo. This is customary in this type of litigation. Lead Class Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses unless ordered by the Court. Therefore, Lead Class Counsel will file a motion asking the Court at the Final Approval Hearing to make an award of attorneys' fees and costs. They will ask for an amount up to \$296,000 to cover costs of litigation and settlement and attorneys' fees. They will also ask for an award to the Named Plaintiff in the amount of \$1,000, and any taxes. The Court may award less than these amounts. Any amounts awarded by the Court will be paid by BevMo.

**14. What is the difference between objecting and requesting exclusion?**

Objecting is appearing in the case and asking the Court not to approve the Settlement because you do not believe it is fair. If the Court agrees with you, there will not be any Settlement and you and the other class members will not receive anything under the Settlement Agreement.

Requesting exclusion or opting out is telling the Court you do not want to be part of the Settlement Class and Settlement Agreement. If you exclude yourself by submitting an Opt-Out Form, you cannot object to the Settlement because it no longer concerns you.

**15. Additional Information.**

You can get more information by contacting Lead Class Counsel.

This Notice is a summary and does not describe all of the details of the Settlement Agreement. For full details of the matters discussed in this notice, you may want to review the Settlement Agreement, which is posted at [www.#####.com](http://www.#####.com). That website also contains detailed instructions on how to update your contact information, as well as an opt-out form for those who wish to exclude themselves from the settlement. Note that the Settlement Agreement posted on the website contains examples of the advertising changes that BevMo has made, and that will be made permanent under the Settlement. The Settlement Agreement is also filed with the Court, and may be inspected during business hours, at the office of the Civil Clerk of the Court, San Francisco Superior Court, 400 McAllister St., Room 103, San Francisco, California 94102. The case is entitled *Gray v. Beverages & More Inc.*, Civ. No. CGC-493678. The Court's on-line docket is located at <http://www.sfsuperiorcourt.org/onlineservices>.

**PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE**

DATED: \_\_\_\_\_, 2015

**BY ORDER OF THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA, COUNTY OF SAN  
FRANCISCO**

**EXHIBIT 2**  
**[PROPOSED]**  
**ORDER PRELIMINARILY APPROVING SETTLEMENT**  
**AND PROVIDING FOR NOTICE**

1 DOUGLAS A. WINTHROP (183532)  
douglas.winthrop@aporter.com  
2 **ARNOLD & PORTER LLP**  
Three Embarcadero Center, 10th Floor  
3 San Francisco, California 94111-4024  
Telephone: 415.471.3100  
4 Facsimile: 415.471.3400

5 Attorneys for Defendant  
BEVERAGES & MORE, INC.

6  
7 ROBERT J. STEIN III (212495)  
rstein@alvaradosmith.com  
8 **ALVARADO SMITH**  
A Professional Corporation  
1 MacArthur Place, Suite 200  
9 Santa Ana, California 92707  
Telephone: 714.852.6800  
10 Facsimile: 714.852.6899

11 Attorneys for Plaintiff  
PETER R. GRAY, JR.

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN FRANCISCO  
15 UNLIMITED JURISDICTION

16 PETER R. GRAY, JR., on behalf of himself  
and all others similarly situated,

17 Plaintiffs,

18 v.

19 BEVERAGES & MORE, INC. dba  
20 BEVMO, a Delaware corporation,

21 Defendant.

Case No.: CGC-09-493678

Action Filed: October 22, 2009  
Class Action

**[PROPOSED] ORDER PRELIMINARILY  
APPROVING SETTLEMENT AND  
PROVIDING FOR NOTICE**

Dept: 304  
Judge: Hon. Curtis E. A. Karnow

1           WHEREAS, Plaintiff Peter R. Gray, Jr. ("Plaintiff" or "Named Plaintiff") and Defendant  
2 Beverages & More, Inc. ("Defendant" or "BevMo") (each a "Party" and collectively the "Parties")  
3 having made an application for an order preliminarily approving the settlement of the above-  
4 captioned action (the "Action"), in accordance with the Agreement of Settlement dated  
5 December \_\_, 2014 (the "Settlement Agreement" or "Settlement"), which, together with the  
6 Exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action  
7 with prejudice upon the terms and conditions set forth therein;

8           WHEREAS, all defined terms contained herein shall have the same meaning as set forth in  
9 the Settlement Agreement; and

10           WHEREAS, the Court having read and considered the Settlement Agreement and the  
11 Exhibits annexed thereto, and Plaintiff's Motion for Preliminary Approval of Settlement and papers  
12 submitted in support thereof, and for good cause shown:

13           NOW, THEREFORE, IT IS HEREBY ORDERED:

14           1.     The Court does hereby preliminarily approve the Settlement Agreement on behalf of  
15 all persons who, during the period from October 21, 2005 through February 9, 2010 (the "Class  
16 Period"), purchased wine at BevMo that was offered as part of a 5 Cent Sale either (a) from a  
17 BevMo store located in the State of California or (b) through BevMo's website and made payment  
18 from a billing address in the State of California, but excluding the undersigned and the  
19 undersigned's immediate family members, any entities in which Defendant has a controlling interest  
20 or which have a controlling interest in Defendant, and the officers, directors, employees, affiliates,  
21 and attorneys for Defendant (the "Settlement Class").

22           2.     A hearing (the "Final Approval Hearing") shall be held before this Court on {###}  
23 {approximately 150 days from the date of entry, calculated as follows: (1) 90 days after the Notice  
24 Date, which is 60 days after the entry of the Preliminary Approval Order} at {###} Pacific Time, at  
25 the Superior Court of the State of California, County of San Francisco, 400 McAllister Street, Dept.  
26 304, San Francisco, California, to determine (a) whether the proposed Settlement Agreement is fair,  
27 reasonable, adequate, and in the best interests of the Settlement Class pursuant to California Rules  
28 of Court, Rule 3.769, and should be finally approved by the Court, and (b) whether a Judgment as

1 provided in Paragraph 4 of and Exhibit 3 to the Settlement Agreement should be entered in this  
2 matter; (2) whether to award attorneys for Plaintiff ("Lead Class Counsel") their requested  
3 attorneys' fees and reimbursement of expenses; (3) whether to award the Named Plaintiff his  
4 requested incentive award; and (4) whether the proposed relief to the Settlement Class is fair and  
5 reasonable. The Court may continue or adjourn the Final Approval Hearing without further notice  
6 to Settlement Class Members.

7 3. The Court may decide to approve the Settlement with or without modification and  
8 with or without further notice of any kind. The Court may also enter its Judgment approving the  
9 Settlement Agreement and dismissing the claims in the Complaint, on the merits and with prejudice,  
10 regardless of whether it has approved the relief to the Settlement Class or awarded attorneys' fees,  
11 reimbursement of expenses, or an award to the Named Plaintiff.

12 4. The Court approves, as to form and content, the Notice of Pendency and Settlement  
13 of Class Action (the "Long Form Notice") annexed as Exhibit 1 to the Settlement Agreement, and  
14 finds that the email distribution and publication of the Email Notice and Publication Notice in the  
15 forms annexed as Exhibits 4 and 5 to the Settlement Agreement meet the requirements of Section  
16 1781 of the California Civil Code, Section 382 of the California Code of Civil Procedure, California  
17 Rules of Court, Rule 3.766, and due process, and is the best notice practicable under the  
18 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

19 5. Defendant shall undertake the administrative responsibility of for giving notice to the  
20 Settlement Class as set forth in Section II(C) of the Settlement Agreement.

21 6. Within 60 calendar days of the entry of this Order (the "Notice Date"), Defendant  
22 shall: (a) disseminate a copy of the Email Notice substantially in the form annexed as Exhibit 4 to  
23 the Settlement Agreement by electronic mail to all Class Members who can be identified by a  
24 reasonable effort by Defendant utilizing its computer database as described in Section II(C)(1) of  
25 the Settlement Agreement; (b) cause the Publication Notice substantially in the form annexed as  
26 Exhibit 5 to the Settlement Agreement to be published on two separate occasions in the form of 1/8  
27 page black and white ads in the following publications: (1) Los Angeles Times; (2) San Francisco  
28 Chronicle; (3) Sacramento Bee; (4) Orange County Register; (5) San Diego Union Tribune; and (6)

1 the Bay Area News Group of papers, which includes (a) San Jose Mercury News, (b) San Mateo  
2 County Times, (c) Contra Costa Times, (d) West County Times, (e) East County Times, (f) San  
3 Ramon Valley Times, (g) Oakland Tribune, (h) Vallejo Times-Herald, (i) Vacaville Reporter, (j)  
4 Marin Independent Journal, (k) Santa Cruz Sentinel, (l) The Argus/The Daily Review, and (m) Tri-  
5 Valley Times; and (c) set up the Settlement Website on which it shall post this Order and the  
6 Settlement Agreement, as well as the Long Form Notice and the Claim Form and Opt-Out Forms  
7 substantially in the forms annexed as Exhibits 1, 6, and 7 to the Settlement Agreement.

8 7. At least 14 calendar days prior to the deadline for filing papers in support of the  
9 Final Approval of the Settlement, Defendant shall provide to Lead Class Counsel proof, by affidavit  
10 or declaration, that the notices described in the preceding paragraph have been provided in the  
11 prescribed manner and Lead Class Counsel will include such declaration with the Final Approval of  
12 Settlement papers to be filed with the Court.

13 8. Lead Class Counsel has the authority to enter into the Settlement Agreement on  
14 behalf of the Settlement Class and is authorized to act on behalf of the Settlement Class Members  
15 with respect to all acts or consents that may be required by or that may be given pursuant to the  
16 Settlement Agreement or such other acts that are reasonably necessary to consummate the  
17 Settlement.

18 9. Any Settlement Class Member may enter an appearance in the Action, at his or her  
19 own expense, individually or through counsel of his or her own choice. If Settlement Class  
20 Members do not enter an appearance, they will be represented by Lead Class Counsel.

21 10. Any Settlement Class Member who wishes to make a written objection must serve  
22 by mail or email such objection so that it is received not later than \_\_\_\_\_, 2015  
23 {30 days before the Final Approval Hearing}, by Lead Class Counsel, Robert J. Stein III,  
24 ALVARADO SMITH, APC, 1 MacArthur Place, Suite 200, Santa Ana, CA 92707, Tel: (714) 852-  
25 8637, rstein.settlement@alvaradosmith.com, who will then file it with the Court. An objection must  
26 indicate the case name and also include the following information: (1) name, address, and  
27 telephone number of the Settlement Class Member; (2) all grounds for the objection, including any  
28 legal support the Settlement Class Member or his or her counsel wish to assert; (3) if represented by



1 counsel, the name, address, and telephone number of all counsel who represent the Settlement Class  
2 Member; (4) a statement confirming whether the Settlement Class Member or his or her counsel  
3 plan to appear at the Final Approval Hearing; (5) the name, address, and telephone number of any  
4 counsel that will appear at the Final Approval Hearing; and (6) the number of times the Settlement  
5 Class Member and his or her counsel filed an objection to any other class action settlement in the  
6 previous five years and the identity of that case, the nature and resolution of each objection. Any  
7 Settlement Class Member who does not make his or her objection in the manner provided herein  
8 shall be deemed to have waived such objection and shall forever be foreclosed from making any  
9 objection to the Settlement Agreement, to Lead Class Counsel's application for fees and expenses,  
10 and/or to the Named Plaintiff's request for an incentive award, unless otherwise ordered by the  
11 Court. Any Settlement Class Member who submits a timely objection may, but is not required to,  
12 appear and address the Court at the Final Approval Hearing.

13 11. All papers including memoranda or briefs in support of final approval of the  
14 Settlement Agreement, Lead Class Counsel's application for fees and expenses, and the Named  
15 Plaintiff's request for an incentive award shall be filed and served no later than  
16 \_\_\_\_\_ 2015 {21 days before the Final Approval Hearing}. Any  
17 opposition papers must be filed and served by \_\_\_\_\_ 2015 {14 days before  
18 the Final Approval Hearing}, and any reply papers shall be filed by \_\_\_\_\_  
19 2015 {7 days before the Final Approval Hearing}.

20 12. Settlement Class Members shall be bound by all determinations and judgments in the  
21 Action, whether favorable or unfavorable, unless such persons request exclusion from the  
22 Settlement Class in a timely and proper manner, as provided as follows. A Settlement Class  
23 Member wishing to "opt-out" of the Settlement Class and/or request exclusion from the Settlement  
24 Class, shall notify the Lead Class Counsel in writing at the address set forth in the Notice either by  
25 electronically submitting web-based opt-out form via the settlement website no later than 14  
26 calendar days prior to the Final Approval Hearing, or by submitting a printed copy of the opt-out  
27 form (to be made available on the settlement website) via first class mail, postage prepaid, and  
28 postmarked no later than 14 calendar days prior to the Final Approval Hearing. Such request for

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exclusion shall clearly indicate the case name, the name, address, and telephone number of the person seeking exclusion, and that the sender specifically requests to be excluded from the Settlement Class (as defined in the Settlement Agreement). The request for exclusion shall not be effective unless the request for exclusion provides the required information and is made within the time stated above, or the request for exclusion is otherwise accepted by the Court. Settlement Class Members who timely and properly exclude themselves from the Settlement Class shall not be entitled to receive any relief as described in the Settlement Agreement.

13. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

14. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement.

15. In the event that the Settlement Agreement shall not be consummated pursuant to its terms, the Settlement Agreement, except as otherwise provided herein, including any amendment(s) thereto, and this Order, shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any action or proceeding by any person or entity, and each party shall be restored to his or its respective position as it existed before the execution of the Settlement Agreement.

IT IS SO ORDERED.

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

\_\_\_\_\_  
HON. CURTIS E. A. KARNOW  
SUPERIOR COURT JUDGE

**EXHIBIT 3**

**[PROPOSED]  
JUDGMENT**

1 DOUGLAS A. WINTHROP (183532)  
2 douglas.winthrop@aporter.com  
3 **ARNOLD & PORTER LLP**  
4 Three Embarcadero Center, 10th Floor  
5 San Francisco, California 94111-4024  
6 Telephone: 415.471.3100  
7 Facsimile: 415.471.3400

8 Attorneys for Defendant  
9 BEVERAGES & MORE, INC.

10 ROBERT J. STEIN III (212495)  
11 rstein@alvaradosmith.com  
12 **ALVARADO SMITH**  
13 A Professional Corporation  
14 1 MacArthur Place, Suite 200  
15 Santa Ana, California 92707  
16 Telephone: 714.852.6800  
17 Facsimile: 714.852.6899

18 Attorneys for Plaintiff  
19 PETER R. GRAY, JR.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SAN FRANCISCO

22 UNLIMITED JURISDICTION

23 PETER R. GRAY, JR., on behalf of himself  
24 and all others similarly situated,

25 Plaintiffs,

26 v.

27 BEVERAGES & MORE, INC. dba  
28 BEVMO, a Delaware corporation,

Defendant.

Case No.: CGC-09-493678

Action Filed: October 22, 2009  
Class Action

**[PROPOSED] JUDGMENT**

Dep't: 304  
Judge: Hon. Curtis E. A. Karnow

1 This matter came before the Court for hearing pursuant to this Court's Order Preliminarily  
2 Approving Settlement and Providing for Notice ("Preliminary Approval Order"), on the application  
3 of the Parties for approval of their Agreement of Settlement (the "Settlement Agreement" or  
4 "Settlement"). Due and adequate notice having been given to the Settlement Class as required in  
5 the Preliminary Approval Order, and the Court having considered all papers filed and proceedings  
6 had herein and otherwise being fully informed in the premises and good cause appearing therefore,  
7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

8 1. This Judgment incorporates by reference the definitions in the Settlement  
9 Agreement, and all terms herein shall have the same meaning as set forth in the Settlement  
10 Agreement.

11 2. This Court has jurisdiction over the subject matter of the Action and over all Parties  
12 to the Action, including all Settlement Class Members.

13 3. This Court hereby approves the Settlement Agreement and finds that the Settlement  
14 is, in all respects, fair, reasonable, adequate, and in the bests interest of the Settlement Class. The  
15 Parties are hereby directed to consummate, carry out, or complete the provisions of the Settlement  
16 Agreement in accordance with its terms.

17 4. The Action is hereby dismissed as to the Defendant on the merits with prejudice and  
18 without costs (except as otherwise provided for in the Settlement Agreement), and Plaintiff and  
19 each of the Settlement Class Members, on the Effective Date, shall be deemed to have, and by  
20 operation of this Judgment shall have, fully, finally, and forever released, relinquished, and  
21 discharged all Released Claims against the Released Parties; provided, however, that the Releases  
22 shall not include the right to, or any claim or action brought to, enforce the Settlement Agreement or  
23 any claim for breach of the Settlement Agreement.

24 5. As of the Effective Date, all Settlement Class Members are hereby forever barred  
25 and enjoined from prosecuting the Released Claims against the Released Parties.

26 6. The Notices to the Settlement Class described in Section II(C) of the Settlement  
27 Agreement constituted the best notice practicable under the circumstances, including the individual  
28 notice to all Settlement Class Members who could be identified through reasonable effort. The

1 Notice provided pursuant to the Settlement Agreement fully satisfied the requirements of Section  
2 1781 of the Civil Code, Section 382 of the Code of Civil Procedure, California Rules of Court, Rule  
3 3.766, and the requirements of due process. A full opportunity has been offered to the Settlement  
4 Class Members to object to the proposed Settlement Agreement and to participate in the hearing  
5 thereon. Thus, it is hereby determined that all Settlement Class Members are bound by this  
6 Judgment except those persons who excluded themselves from the Class (if any), whose identities  
7 are set forth on Exhibit A hereto (if applicable).

8 7. Neither the Settlement Agreement, nor any act performed or document executed  
9 pursuant to or in furtherance of the Settlement Agreement: (a) is or may be deemed to be or may be  
10 used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of  
11 any wrongdoing or liability of the Defendant or Released Parties, or Plaintiff or Settlement Class  
12 Counsel; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any  
13 fault or omission of any Defendant or Released Party or Plaintiff or Settlement Class Counsel,  
14 including in any civil, criminal, or administrative proceeding in any court, administrative agency, or  
15 other tribunal. Defendant and the other Released Parties or Plaintiff or Settlement Class Counsel  
16 may file the Settlement Agreement and/or this Judgment in any action that may be brought against  
17 them to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,  
18 release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue  
19 preclusion or similar defense or counterclaim, or as may be necessary to enforce the terms of the  
20 Settlement Agreement and Court Orders and Judgment entered in connection with the approval of  
21 the Settlement Agreement.

22 8. The finality of this Judgment shall not be affected, in any manner, by rulings that the  
23 Court may make on Settlement Class Counsel's application for an award of attorneys' fees and  
24 reimbursement of expenses and/or for an incentive award to the Named Plaintiff.

25 9. The Court hereby finds that the relief provided to the Settlement Class in the  
26 Settlement Agreement is fair and reasonable.

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10. The Court reserves exclusive and continuing jurisdiction to implement, enforce, administer, effectuate, interpret, monitor, and ensure compliance with the provisions of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

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

\_\_\_\_\_  
HON. CURTIS E. A. KARNOW  
SUPERIOR COURT JUDGE

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**EXHIBIT A**

**SETTLEMENT CLASS MEMBERS VALIDLY EXCLUDED FROM THE SETTLEMENT**



**EXHIBIT 4**

**E-MAIL NOTICE**

**(REVISED PER COURT ORDER DATED JANUARY 16, 2015)**

To: XXXXXXXXXXXXXXXXXXXX  
From: XXXXXXXXXXXXXXXXXXXX  
Re: Legal Notice of Class Action Settlement

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**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**  
**GRAY V. BEVERAGES & MORE, INC.**

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**You are receiving this notice because you may have purchased one or more two-bottle sets of wine from Beverages & More in California pursuant to a 5 Cent Sale from October 21, 2005 through February 9, 2010.**

**A court authorized this notice. This is not a solicitation from a lawyer or an advertisement.**

**Why did I get this notice?** This notice relates to a proposed settlement (“Settlement”) of a class action lawsuit (“Action”) filed against Beverages & More, Inc. (“BevMo”) relating BevMo’s 5 Cent Sale wine promotions in California during the period of October 21, 2005 through February 9, 2010 (the “Class Period”). According to available records, you may be a “Settlement Class Member.”

**What is the Action about?** The Action alleges that BevMo made misleading statements to California consumers with respect to BevMo’s 5 Cent Sale in violation California law. BevMo denies any wrongdoing. No court has decided that BevMo did anything wrong.

**What relief does the Settlement provide?** After this case was filed, BevMo promptly made certain changes to its 5 Cent Sale advertising. The Settlement requires that changes will remain in place for as long as 5 Cent Sales continue in the future. Settlement Class Members will be entitled to automatically receive one (1) one-dollar discount coupon for each purchase of a two-bottle set of wine made pursuant to a 5 Cent Sale in California during the Class Period. BevMo has also agreed to reimburse the Plaintiff and his attorneys for a limited amount of their costs and attorneys’ fees incurred in prosecuting the Action and negotiating the Settlement, and for acting as the class representative in the Action.

This is only a notice of what to expect. Nothing will happen unless the Court approves the Settlement.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

**DO NOTHING AND RECEIVE BENEFIT**

If the Court orders payments to Settlement Class Members, and if BevMo’s computer records show you are a Settlement Class Member, BevMo will automatically email you one (1) one-dollar discount coupon for each two-bottle set of wine you bought pursuant to a 5 Cent Sale from 10/21/05 through 2/9/10. BevMo will use the email address it has on file for you.

You will also give up your right to be part of any other lawsuit

	against BevMo about the claims in this case.
<b>UPDATE YOUR EMAIL ADDRESS NO LATER THAN {#####}</b>	If you are a class member, but you believe your email address in BevMo's database is out of date, you must update your email address by {#####} to get coupons. You can do so at BevMo.com or by calling 1-877-77BEVMO.
<b>OBJECT NO LATER THAN {#####}</b>	Submit a written objection explaining why you do not like the Settlement and think it should not be approved. You must send your objection to Lead Class Counsel who will file it with the Court for you. If you submit an objection, you may also speak at the Court's Final Approval Hearing and explain your objection to the Court. You are not required to attend the hearing, though. The Final Approval Hearing will take place on {####} at {#####}.
<b>EXCLUDE YOURSELF NO LATER THAN {#####}</b>	Get no payment in the form of one or more discount coupons. This is the only option that allows you to be a part of any other lawsuit against BevMo about the legal claims in this case.

**More information?** For more information about the Settlement and how to take the actions described above, please visit [www.#####.com](http://www.#####.com) or contact Lead Class Counsel:

Robert J. Stein III  
ALVARADO SMITH, APC  
1 MacArthur Place, Suite 200  
Santa Ana, CA 92707  
Tel: (714) 852-6837  
rstein.settlement@alvaradosmith.com

**Please do not call the court if you have questions about this case.**

**What if I my email address has changed?** The coupons will be emailed to you. If your email address has changed, or you are not sure BevMo has your correct email address, you can update your information so that you can receive the coupons. To update your information please visit [www.BevMo.com](http://www.BevMo.com) or call 1-877-77BEVMO during BevMo's business hours. Detailed instructions for updating your contact information are available at [www.#####.com](http://www.#####.com).

**What if I do not want to be part of this case?** If you do not want to be included in this case, you may exclude yourself online at [www.#####.com](http://www.#####.com) or by sending a written request to opt-out to Lead Class Counsel: Robert J. Stein, III, AlvaradoSmith, APC, 1 MacArthur Place, Suite 200, Santa Ana, CA 92707; tel: 714-852-6837; [rstein.settlement@alvaradosmith.com](mailto:rstein.settlement@alvaradosmith.com). Requests to opt out must be submitted online or post-marked no later than \_\_\_\_\_ 2015. If you opt-out of the Class, you will not receive any benefits, and if the Settlement is approved, you will not release your claims against BevMo, and you will not be bound by any judgment in this case.

**What if I want to object to the Settlement?** If you do not exclude yourself from the Settlement, you have the right to object to any aspect of the proposed Settlement, including the

relief provided to the Class Members and/or the attorneys' fees and expenses, and/or the incentive awards. You may make your objections personally or through any attorney that you hire. Even if you object to the Settlement, you will still be a Class Member and may still be entitled to share in the Settlement proceeds if the Settlement is approved by the Court. To be valid and considered by the Court, any objections by you must be submitted in writing, must be served on Lead Class Counsel by email or U.S. mail post marked no later than xxxxxxxx, 2015, and must also include the following information: (1) name, address, and telephone number of the Settlement Class Member; (2) all grounds for the objection, including any legal support the Settlement Class Member or his or her counsel wish to assert; (3) if represented by counsel, the name, address, and telephone number of all counsel who represent the Settlement Class Member; (4) a statement confirming whether the Settlement Class Member or counsel plan to appear at the Final Approval Hearing; (5) the name, address, and telephone number of any counsel that will appear at the Final Approval Hearing; and (6) the number of times the Settlement Class Member and his or her attorney (if applicable) have filed an objection to a class action settlement in the previous five years and the identity of the case and the nature and outcome of each objection. Do not mail or attempt to file these documents with the Court. Lead Counsel will file them.

**EXHIBIT 5**

**PUBLICATION NOTICE**

**(REVISED PER COURT ORDER DATED JANUARY 16, 2015)**

Proposed publication notice mock-up is based on dimensions of a 1/8 page ad in the *Los Angeles Times*, which would be 4.92 in. x 5.25 in.

**If you bought wine at BevMo's 5 Cent Sale from Oct. 21, 2005 through Feb. 9 2010, a class action settlement may affect your rights.**

**What is the case about?** The lawsuit alleges that BevMo misled consumers about its 5 Cent Sale. BevMo denies any wrongdoing. No court has decided that BevMo did anything wrong.

**Who is in the class?** You are a class member if you bought at least one two-bottle set of wine at BevMo's 5 Cent Sale from October 21, 2005 through February 9, 2010 either at a California BevMo store or from BevMo.com using a California billing address.

**What relief does the Settlement provide?** Class members will get a one dollar coupon for each two-bottle set of wine purchased pursuant to a 5 Cent Sale during the Class Period. BevMo has also made permanent changes to its 5 Cent Sale advertising. BevMo also agreed to reimburse the Named Plaintiff and his attorneys for costs and attorneys' fees incurred in prosecuting the Action and negotiating the Settlement.

For more information visit [www.#####.com](http://www.#####.com) or contact Robert J. Stein III, ALVARADOSMITH, APC, 1 MacArthur Place, Suite 200, Santa Ana, CA 92707, Tel: (714) 852-6837, [rstein.settlement@alvaradosmith.com](mailto:rstein.settlement@alvaradosmith.com).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING</b>	If the Court orders payments to class members, and if BevMo's records show you are a class member, BevMo will email one (1) one-dollar discount coupon for each two-bottle set of wine you bought pursuant to a 5 Cent Sale from 10/21/05 through 2/9/10. BevMo will use the email address it has on file for you. You will give up your right to sue BevMo about the claims in this case.
<b>UPDATE YOUR EMAIL ADDRESS BY {#####}</b>	If you are a class member, but you believe your email address in BevMo's database is out of date, you must update your email address by {#####} to get coupons. You can do so at BevMo.com or by calling 1-877-77BEVMO.
<b>OBJECT NO LATER THAN {#####}</b>	Submit a written objection explaining why you do not like the settlement and think it should not be approved. Send the objection to Lead Class Counsel.
<b>GO TO A HEARING ON {#####} AT {#####}</b>	Speak in Court about the fairness of the Settlement.
<b>EXCLUDE YOURSELF BY {#####}</b>	Receive no discount coupons. This is the only option that allows you to be a part of any other lawsuit against BevMo about the claims in this case.

**This Court-authorized notice is not an ad, and is only a summary.**

**EXHIBIT 6**

**CONTACT INFORMATION UPDATE INSTRUCTIONS**

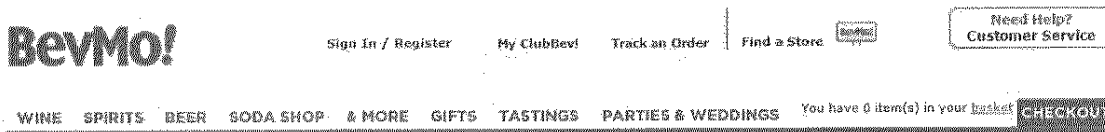
**CONTACT INFORMATION UPDATE INSTRUCTIONS**

If you are a Settlement Class Member, BevMo will automatically email one (1) one-dollar Discount Coupon for each purchase of a two-bottle set of wine that you made pursuant to a 5 Cent Sale during the Class Period. The Class Period is the period from October 21, 2005 through February 9, 2010. BevMo will determine your eligibility based on available computer records.

If you believe your email address is **up to date** in BevMo's customer service database, **you don't need to do anything**. If you are eligible to receive one or more Discount Coupons, they will be automatically emailed to you using the email address BevMo has on file for you.

If you believe your email address is **not up to date** in BevMo's customer service database, you may **update your contact information** in one of two ways.

*First*, if you know the email address associated with your ClubBev account (even if that email address is no longer your primary email address) you can **log into your account** at <http://www.bevmo.com> by clicking on the "Sign In / Register" link at the top of the web page. Click on the screenshot below to open the BevMo.com website in a new window.



*Second*, if you do **not** know the email address associated with your ClubBev account, or if you have trouble signing in through the BevMo website, you can **call BevMo's customer service number**. A BevMo customer service agent will help you update your information over the phone. The process takes about five minutes.

BevMo's customer service telephone number is **1-877-77BEVMO**. With the exception of major holidays, BevMo's customer service business hours are Monday through Friday from 8 a.m. to 7 p.m., Saturday from 10 a.m. to 7 p.m., and Sunday from 3 p.m. to 7 p.m. All times are Pacific time.

**IF YOU BELIEVE YOU ARE A CLASS MEMBER BUT YOU ARE UNSURE IF YOUR EMAIL ADDRESS IS UP TO DATE IN BEVMO'S CUSTOMER SERVICE DATABASE, YOU *MUST* UPDATE YOUR CONTACT INFORMATION USING ONE OF THE TWO METHODS DESCRIBED ABOVE NO LATER THAN {#####} AT 6:59 P.M. PACIFIC TIME.**

**OTHERWISE BEVMO WILL BE UNABLE TO EMAIL YOU YOUR DISCOUNT COUPONS.**

**Questions?** Contact Lead Class Counsel Robert J. Stein III at [rstein.settlement@alvaradosmith.com](mailto:rstein.settlement@alvaradosmith.com) or (714) 852-6800.



**EXHIBIT 7**  
**OPT-OUT FORM**

**GRAY V. BEVERAGES & MORE, INC.,**  
**Superior Court of the State of California, County of San Francisco, Case No. CGC-493678**

**OPT-OUT FORM / REQUEST FOR EXCLUSION**

If you want to exclude yourself from this class action settlement, complete the following form online and click on the "Submit Form Online" button at the bottom left. You can also print out a blank copy of this form, fill it out, and mail it in. Information you provide on this form will be used only to exclude you from the class action settlement.

**The Exclusion Request must be submitted on-line or post-marked prior to midnight on #####.**

**Questions?** Contact Lead Class Counsel Robert J. Stein III at [rstein.settlement@alvaradosmith.com](mailto:rstein.settlement@alvaradosmith.com)

If sending by mail, send to:

*Gray v. Beverages & More, Inc., Settlement*  
c/o Beverages & More, Inc.  
**Attn: Legal Department**  
1401 Willow Pass Road, Suite 900  
Concord, CA 94520

**CONTACT INFORMATION**

*(Provide all email addresses and phone numbers that may be associated with your ClubBev Account.)*

\*First Name: \_\_\_\_\_ \*Last Name: \_\_\_\_\_

\*Email Address Associated with ClubBev Account: \_\_\_\_\_

Other email addresses possibly associated with ClubBev Account:

Email 2: \_\_\_\_\_ Email 3: \_\_\_\_\_

\*Mailing Address: \_\_\_\_\_

\*City: \_\_\_\_\_ \*State: \_\_\_\_\_ \*Zip: \_\_\_\_\_

\*Phone Number Associated With ClubBev Account: \_\_\_\_\_

Current Phone Number (if different): \_\_\_\_\_

*\* means information is required.*

**REQUEST FOR EXCLUSION / OPT-OUT**

I do not want to participate in the class action settlement described above. Instead, I want to be excluded. I understand that by excluding myself, I will not receive Discount Coupons from the settlement.

\*Initials (if submitting online): \_\_\_\_\_ Signature (if printing): \_\_\_\_\_

**SUBMIT FORM ONLINE**

**PRINT BLANK FORM SO I CAN MAIL IT IN**

**EXHIBIT 8**

**EXHIBIT 8-A**

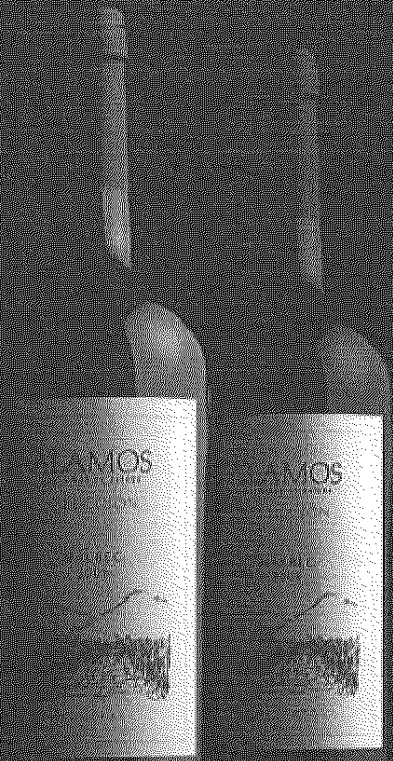
**BEVMO 5 CENT SALE FLYER – MARCH 2008**

March 2008

# BevMo!

YOUR GUIDE TO THE GOOD LIFE.

WINE ENTHUSIAST  
2007 READER'S CHOICE OF THE YEAR



**Alamos**  
Malbec Selección  
Mendoza '06  
90 PTS ROBERT PARKER, JR.  
\$18.99 ClubBev!  
SECOND BOTTLE FOR **5c**



## BY INVITATION ONLY!

Join us for an exclusive preview sale for ClubBev! members.

**Saturday, 3/15 - Monday, 3/17**

More than 150 wines to choose from.

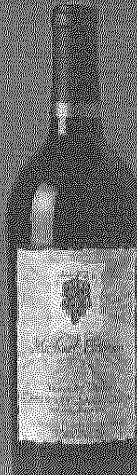
**Wildhurst Vineyards**  
Reserve Chardonnay  
Lake County '03  
SILVER MEDAL 2007 RIVERSIDE INTL WINE COMP  
\$12.99 ClubBev!  
SECOND BOTTLE FOR **5c**



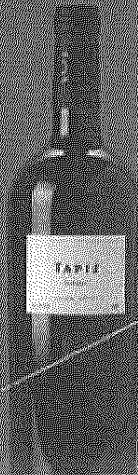
**39 Degrees**  
Sauvignon Blanc  
Lake County '06  
#18 TOP 100 BEST BUYS  
88 PTS, WINE ENTHUSIAST  
\$13.99 ClubBev!  
SECOND BOTTLE FOR **5c**



**Michael Pozzan Winery**  
Cabernet Sauvignon  
Alexander Valley '05  
GOLD MEDAL 2007 SONOMA CTY HARVEST FAIR WINE COMP  
\$15.99 ClubBev!  
SECOND BOTTLE FOR **5c**



**Tapiz**  
Malbec  
Mendoza '06  
82 PTS WILFRED WONG  
\$15.99 ClubBev!  
SECOND BOTTLE FOR **5c**



**BevMo!** 5¢  
WINE SALE

# BUY ONE WINE, GET

**\$8.99** ClubBev!  
**Parducci**  
**Chardonnay**  
**Mendocino County '06**  
SILVER MEDAL 2007 CA STATE FAIR WINE COMP. A fruit-driven Chard that's clean, bright, and lasting on the palate; a first-rate wine for an upscale party.  
**SECOND BOTTLE FOR 5¢**

**\$10.99** ClubBev!  
**Jekel Vineyards**  
**Gewürztraminer**  
**Monterey '05**  
SILVER MEDAL 2006 CA STATE FAIR WINE COMP. A versatile spice box; delivers pleasing, flowery ripe-fruit flavors with a hint of jasmine.  
**SECOND BOTTLE FOR 5¢**

**\$11.99** ClubBev!  
**Guenoc**  
**Sauvignon Blanc**  
**Lake County '06**  
GOLD MEDAL, BEST OF CLASS, 2007 CA STATE FAIR WINE COMP. Accomplished and well made; explodes with fresh, crisp, dry-citrus flavors.  
**SECOND BOTTLE FOR 5¢**



**\$12.99** ClubBev!  
**Conrada**  
**Sauvignon Blanc**  
**Napa Valley**  
Crisp, with hints of melon and citrus on the palate; tingly finish.  
**SECOND BOTTLE FOR 5¢**

**\$21.99** ClubBev!  
**Joseph Drouhin**  
**Chardonnay**  
**Bourgogne '06**  
89 PTS WILFRED WONG A very fine effort, bright and unusually satisfying. Excellent, commanding presence on the palate; long and enticing finish.  
**SECOND BOTTLE FOR 5¢**

**\$6.49** ClubBev!  
**Tott's Brut**  
A good value, the Tott's Brut is slightly sweet and nicely balanced.  
**SECOND BOTTLE FOR 5¢**

**\$8.99** ClubBev!  
**Stonehaven**  
**Riesling**  
**SE Australia**  
A pleasing, easy-drinking wine that finishes with a bit of a sweet edge.  
**SECOND BOTTLE FOR 5¢**

**\$14.99** ClubBev!  
**Yellow Tail**  
**Reserve Chardonnay**  
**SE Australia '05**  
87 PTS WINE SPECTATOR Soft and fruity; with a spicy, floral character; not heavy or sweet; finishes clean; drink now.  
**SECOND BOTTLE FOR 5¢**

**\$6.99** ClubBev!  
**Walnut Crest**  
**Sauvignon Blanc**  
**Valle Central, Chile**  
A luscious white wine with melon and citrus in abundance; fine for light meals of fish or poultry.  
**SECOND BOTTLE FOR 5¢**

**\$9.99** ClubBev!  
**DeLoach**  
**California Cuvée**  
**Chardonnay**  
Made for sipping and easygoing meals. Pair this with lightly grilled chicken breast.  
**SECOND BOTTLE FOR 5¢**

**\$15.99** ClubBev!  
**Tapiz**  
**Chardonnay**  
**Mendoza '06**  
90 PTS WILFRED WONG Tapiz gets better with each vintage. Exhibits vibrant green-apple flavors with a refreshing streak of minerality; finish is long and zesty.  
**SECOND BOTTLE FOR 5¢**

**\$8.99** ClubBev!  
**Callaway**  
**Coastal Sauvignon Blanc**  
**California**  
Pleasing, bright, tasty, and easy to enjoy; sumptuous, melony flavors.  
**SECOND BOTTLE FOR 5¢**

**\$9.99** ClubBev!  
**Villa Sarti**  
**Pinot Grigio**  
**delle Venezie**  
Racy, with a mineral character that leans a little to the tropical fruit side. Crisp and aromatic; hints of apple on the finish.  
**SECOND BOTTLE FOR 5¢**

**\$17.99** ClubBev!  
**Dahlia**  
**Chardonnay**  
**Monterey County '05**  
90 PTS WILFRED WONG Juicy and scrumptious; glides down the palate with silky ease; tropical flavors with a hint of creaminess.  
**SECOND BOTTLE FOR 5¢**

**\$8.99** ClubBev!  
**Dupond Chardonnay**  
**Vin de Pays d'Oc**  
**SECOND BOTTLE FOR 5¢**

**\$12.99** ClubBev!  
**McWilliam's Hanwood Estate Chardonnay**  
**SE Australia**  
**SECOND BOTTLE FOR 5¢**

**\$17.99** ClubBev!  
**Concha y Toro**  
**Trio Sauvignon Blanc**  
**SECOND BOTTLE FOR 5¢**

**\$8.99** ClubBev!  
**Trinity Oaks Riesling**  
**California**  
**SECOND BOTTLE FOR 5¢**

**\$12.99** ClubBev!  
**Red Bicyclette Chardonnay**  
**Vin de Pays d'Oc**  
**SECOND BOTTLE FOR 5¢**

**\$17.99** ClubBev!  
**Stonehaven Winemaker's Selection**  
**Chardonnay South Australia**  
**SECOND BOTTLE FOR 5¢**

# THE SECOND FOR 5¢

**\$14.99** ClubBev!  
**Palo Alto Red Blend**  
**Maule Valley '06**  
 90 PTS WILFRED WONG Cabernet Sauvignon, Carmerère, and Syrah reiterate this wine's consistent qualities: ripe, full, and internationally styled.  
**SECOND BOTTLE FOR 5¢**

**\$14.99** ClubBev!  
**Shiloh Road Cabernet Sauvignon**  
**Napa Valley '05**  
 90 PTS WILFRED WONG A true crowd-pleaser; beautifully ripened red and black-fruit flavors play nicely on the palate; finely crafted.  
**SECOND BOTTLE FOR 5¢**



**\$15.99** ClubBev!  
**Summerland Syrah**  
**Paso Robles '05**  
 90 PTS WILFRED WONG Refined and poised for excellence with ripe-fruit flavors that play off the wine's oakiness; superbly balanced!  
**SECOND BOTTLE FOR 5¢**

**\$17.99** ClubBev!  
**Château Ballan-Larquette Rouge**  
**Bordeaux '05**  
 90 PTS WILFRED WONG One of Bordeaux's greatest values; possesses power and finesse, excellent balance, and fine red- and black-fruit flavors; drinks very well.  
**SECOND BOTTLE FOR 5¢**

**\$17.99** ClubBev!  
**Guenoc Victorian Claret**  
**North Coast '05**  
 90 PTS WILFRED WONG Shows a bit more Right Bank character than in past years. A pretty, red-fruit wine with drive and elegance.  
**SECOND BOTTLE FOR 5¢**

**\$10.99** ClubBev!  
**Beaulieu Vineyard Beauzeaux**  
**Napa Valley '05**  
 89 PTS WILFRED WONG Combines user-friendly, sumptuous Zinfandel with other varieties to churn out a juicy, fruit-forward, tasty red.  
**SECOND BOTTLE FOR 5¢**

**\$15.99** ClubBev!  
**Grove Street Meritage**  
**Napa Valley**  
 88 PTS WILFRED WONG A fine-drinking red that recalls the best of the Médoc; tasty red- and black-fruit flavors run throughout the palate.  
**SECOND BOTTLE FOR 5¢**

**\$17.99** ClubBev!  
**Vina Robles Syrah**  
**Paso Robles '00**  
 89 PTS WILFRED WONG Shows just how incredibly satisfying a solid Syrah can be; pair this wine up with prime rib.  
**SECOND BOTTLE FOR 5¢**

**\$10.99** ClubBev!  
**Dancing Bull Cabernet Sauvignon**  
**California**  
 Ready to enjoy now. Laced with red fruit and cherry aromas; notes of tart red currants with a touch of spice. Great for easy enjoyment.  
**SECOND BOTTLE FOR 5¢**

**\$15.99** ClubBev!  
**Michael Pozzan Reserve Merlot**  
**Napa County**  
 Silky and smooth, with ripe-fruit flavors that are on-the-juicy side.  
**SECOND BOTTLE FOR 5¢**

**\$18.99** ClubBev!  
**Renwood Zinfandel Lodi '05**  
 88 PTS WILFRED WONG Janusry flavors approach gently, only to come on strong in the finish; tasty swirl.  
**SECOND BOTTLE FOR 5¢**

**\$12.99** ClubBev!  
**Hahn Estates Syrah**  
**Central Coast '05**  
 DBL GOLD MEDAL, BEST OF CLASS, 2006 SF CHRONICLE WINE COMP One of America's great reds. Oodles of grapey, ripe-fruit flavors on the palate.  
**SECOND BOTTLE FOR 5¢**

**\$16.99** ClubBev!  
**Trivento Malbec**  
**Mendoza '05**  
 89 PTS WILFRED WONG This ripe-fruit Malbec delivers the real goods on this varietal; sexy and sassy on the palate, full of life in the finish.  
**SECOND BOTTLE FOR 5¢**

**\$19.99** ClubBev!  
**Taft Street Winemaker's Selection Merlot**  
**Sonoma County '05**  
 87 PTS WILFRED WONG A fine, nicely layered, user-friendly Merlot, perfect for everyday dining and quite at home with weekend entertainment.  
**SECOND BOTTLE FOR 5¢**

**\$11.99** ClubBev!  
**Lodez Vin Rouge**  
**Coteaux du Languedoc**  
**SECOND BOTTLE FOR 5¢**

**\$16.99** ClubBev!  
**Château Rauze Lafargue**  
**Premier Côtes de Bordeaux**  
**SECOND BOTTLE FOR 5¢**

**\$19.99** ClubBev!  
**Taft Street Cabernet Sauvignon**  
**Dry Creek Valley**  
**SECOND BOTTLE FOR 5¢**

**\$14.99** ClubBev!  
**El Portillo Pinot Noir**  
**Mendoza**  
**SECOND BOTTLE FOR 5¢**

**\$16.99** ClubBev!  
**Michael Pozzan Sangiovese**  
**Napa Valley**  
**SECOND BOTTLE FOR 5¢**

**\$22.99** ClubBev!  
**Renwood Petite Sirah**  
**Lodi**  
**SECOND BOTTLE FOR 5¢**

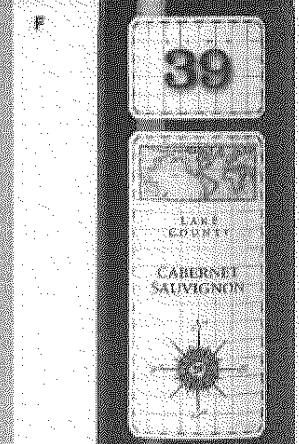
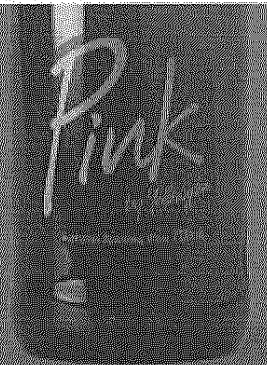
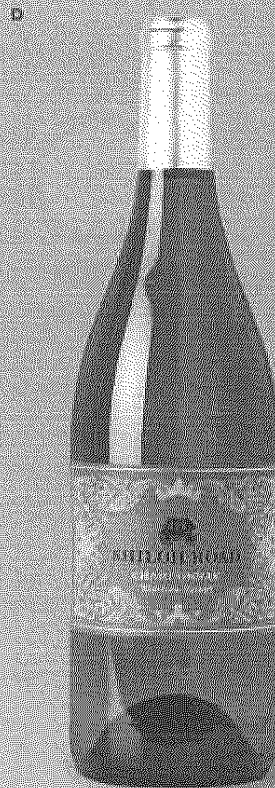
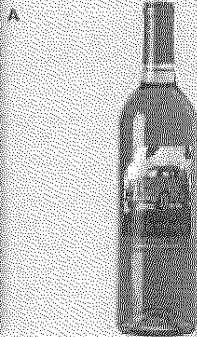
**BevMo!** 1470 Enea Circle, Suite 1600  
Concord, CA 94520

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ADMAIL WEST



BUY ONE, GET ONE FOR 5¢\*

- A** Pink Truck Pink Wine California  
\$9.99 ClubBev!, second bottle for 5¢
- B** Trinchero Family Sauvignon Blanc  
\$11.99 ClubBev!, second bottle for 5¢
- C** Michael Pozzan Chardonnay  
Sonoma County  
\$14.99 ClubBev!, second bottle for 5¢
- D** Shiloh Road Chardonnay  
Sonoma Coast  
\$14.99 ClubBev!, second bottle for 5¢
- E** Yellowglen Pink Sparkling Wine  
Australia  
\$14.99 ClubBev!, second bottle for 5¢
- F** 39 Degrees Cabernet Sauvignon  
Lake County  
\$16.99 ClubBev!, second bottle for 5¢
- G** Green Point Shiraz Victoria  
\$17.99 ClubBev!, second bottle for 5¢
- H** Tower Brook Chardonnay  
Santa Barbara County  
\$19.99 ClubBev!, second bottle for 5¢
- I** Vichon Chardonnay Limoux  
\$19.99 ClubBev!, second bottle for 5¢
- J** Vichon Pinot Noir  
Vin de Pays d'Oc  
\$19.99 ClubBev!, second bottle for 5¢
- K** Joseph Drouhin Pinot Noir  
Bourgogne  
\$21.99 ClubBev!, second bottle for 5¢



Update your ClubBev! account at [BevMo.com/myclubbev](http://BevMo.com/myclubbev)

VISIT BEVMO.COM TO ORDER ONLINE AND PICK UP IN AN HOUR! OR WE CAN SHIP IT TO YOU DIRECTLY.  
Limited to supplies on hand. Vintages subject to change. All bottles are 750ml unless otherwise noted. We reserve the right to correct any typographical errors. \*5¢ sale: Second bottle must be the same as the bottle purchased at full price.



**EXHIBIT 8-B**

**BEVMO 5 CENT SALE FLYER – FEBRUARY 2010**

# BevMo!



**\$15.99**

**Irony  
Pinot Noir  
Monterey County '07**

88 PTS WILFRED WONG: Extremely precise aromas, strawberry-like and chocolate, fine palate textures; smooth, roundish aftertaste.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$14.99**

**Hahn Estates  
Syrah  
Central Coast '08**

GOLD MEDAL 2010 SF CHRONICLE WINE COMP: A deep, concentrated purple color; intense aromas of blackberry, toast, and spiced pepper; full-bodied, rich flavors of crushed fruits and ripe tannins; a great value.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$12.99**

**Beringer  
Sauvignon Blanc  
Napa Valley '06**

87 PTS WINE SPECTATOR: Distinctive, pungent tropical and citrus notes that are fragrant and tasty with tangy herb, passion fruit, and gooseberry.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$19.99**

**Canoe Ridge  
Merlot  
Columbia Valley '05**

87 PTS WILFRED WONG: A tasty wine from the Columbia Valley. Shows fine red-fruit flavors that are smooth and lingering and a trace of dust in the finish. Drinks well now.

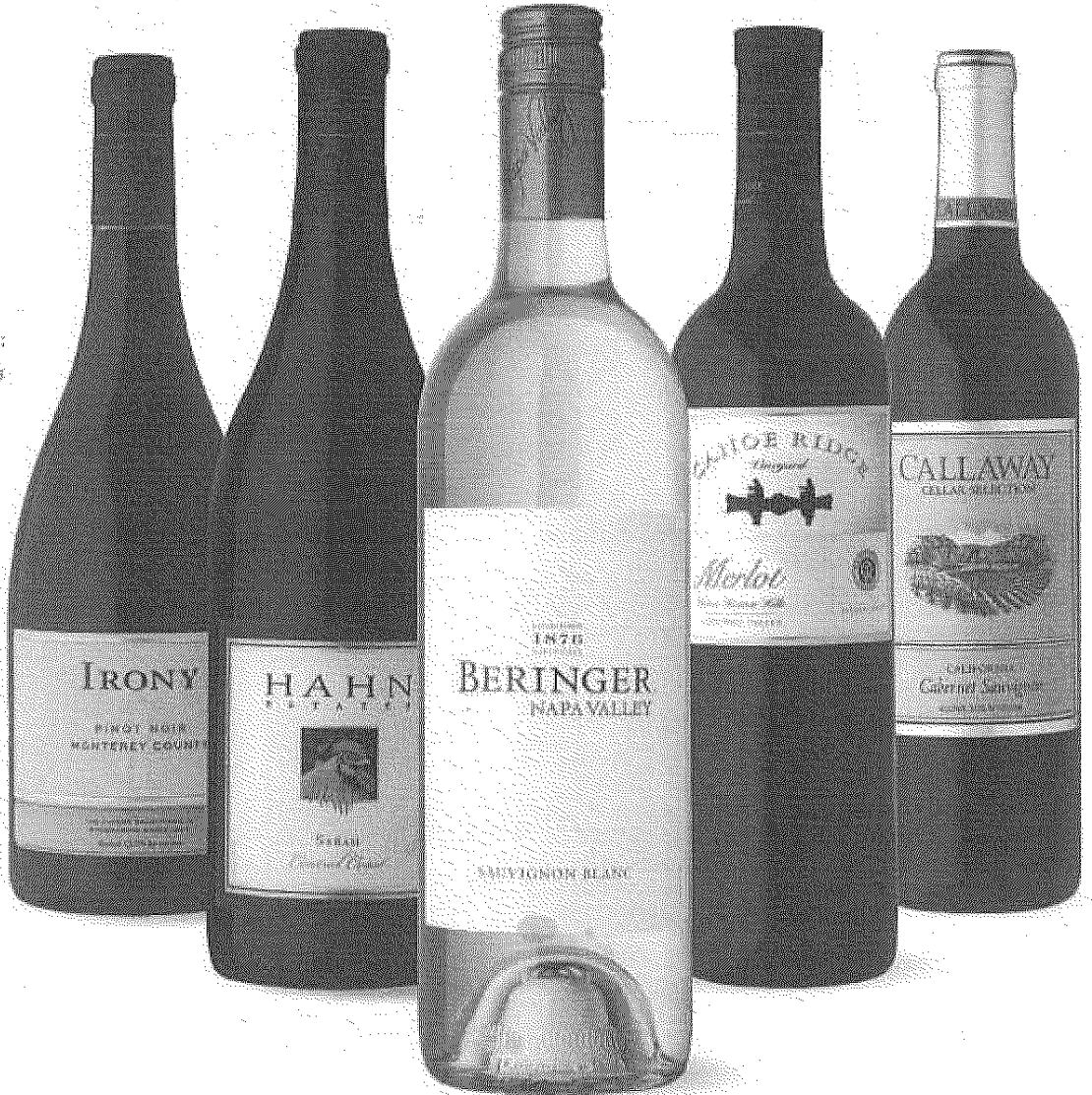
ClubBev! **SECOND BOTTLE FOR 5¢**

**\$8.99**

**Callaway  
Cabernet Sauvignon  
California '08**

A good everyday Cabernet, with soft red-fruit flavors that go nicely with your favorite meats or as an aperitif.

ClubBev! **SECOND BOTTLE FOR 5¢**



## HERE'S A HOT TIP!

The 5¢ Sale starts Wednesday, 2/10.  
Shop early. Shop often.

**MORE THAN  
200 WINES!**

**BevMo! 5¢**  
WINE SALE

# BUY ONE WINE, GET 1

**\$19.99**

**Louis Martini  
Chardonnay  
Napa Valley '07**

Classic Napa Valley Chardonnay, exhibiting ripe green-apple and pear aromas with a hint of citrus; fresh and lively on the palate, touch of vanilla on the finish.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$14.99**

**Michael Pozzan  
Chardonnay  
Russian River Valley '08**

89 PTS WILFRED WONG Up-front, enticing creaminess in its aromas; settles nicely onto the palate with fine tropical, mineral flavors.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$12.99**

**Gnarly Head  
Chardonnay  
California '07**

GOLD MEDAL 2009 CA STATE FAIR WINE COMP Taming the varietal can't be done, so just drink this rich, layered, superb wine that is absolutely versatile.

ClubBev! **SECOND BOTTLE FOR 5¢**



**\$16.99**

**Shiloh Road  
Chardonnay  
Sonoma '08**

90 PTS WILFRED WONG Starts out bold and powerful with ripe apples and cream; settles amazingly well on the palate with mineral, peach skin, and vanilla; crisp finish.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$8.99**

**Woodbridge SVS  
Chardonnay  
Lodi '07**

87 PTS WILFRED WONG Racy and straight to the point. Serves up ripe core-fruit flavors with a faint creamy note. Give this one a good chill.

ClubBev! **SECOND BOTTLE FOR 5¢**

MORE  
**200 V**

**\$12.99**

**Lockwood  
Chardonnay  
Monterey County '08**

89 PTS WILFRED WONG A sophisticated, classy effort with fine purity; comes across with dried citrus peel, distinct mineral, and a touch of creaminess on the palate.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$11.99**

**Loredona  
Pinot Grigio  
California '07**

88 PTS WILFRED WONG Unusually aromatic, this enticing Pinot Grigio shows flowers in the nose and white peaches in the flavors; fine, crisp aftertaste.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$8.99**

**Mezzacorona  
Pinot Grigio  
Italy '08**

86 PTS, BEST BUY, WINE ENTHUSIAST Easy aromas of citrus, peach, kiwi, and white flowers; zesty acidity in a food-friendly Italian white.

ClubBev! **SECOND BOTTLE FOR 5¢**



**\$19.99**

**Bridlewood  
Vignier  
Central Coast '07**

GOLD MEDAL 2009 SF CHRONICLE WINE COMP An incredibly delicious white that's aromatic, core fruited, flowery, and complex on the palate.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$13.99**

**Wildhurst Vineyards  
Reserve Sauvignon Blanc  
Lake County '05**

86 PTS WILFRED WONG Mature and well developed; fine flavors of tart citrus and dried, savory earth; nicely layered on the palate.

ClubBev! **SECOND BOTTLE FOR 5¢**

Also featuring Coppola, Trinity Oaks, Kenwood, Valley of the

# THE SECOND FOR 5¢



**\$14.99**

**Zig Zag Zin  
Zinfandel  
Mendocino County '07**

80 PTS WILFRED WONG Endearing, alcohol-supple Zin brings plenty of berries onto the palate; finishes with a flurry of stones, minerals, and earth.

ClubBev! **SECOND BOTTLE FOR 5¢**



**\$16.99**

**Shiloh Road  
Cabernet Sauvignon  
Napa Valley '07**

88 PTS WILFRED WONG A multitude of charismatic aromas and flavors; actively exhibits sweet leather, focused red and black fruit, and spice-box flavors.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$15.99**

**Synthesis  
Old Vine Zinfandel  
Lodi '07**

91 PTS WILFRED WONG Almost fat, definitely thick, this ripe-berried Zinfandel is the real deal; encompasses the palate with much more than just fruit.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$19.99**

**Powder Keg  
Petite Sirah  
California '07**

92 PTS WILFRED WONG An awesome red, not so gentle yet very enticing; explosive juicy, grapey flavors; long and steady on the palate; fine, lasting finish.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$8.99**

**Talus  
Cabernet Sauvignon  
California '07**

87 PTS WILFRED WONG Flays it close to the vest as it serves up very correct varietal flavors and nuances; soft in the aftertaste.

ClubBev! **SECOND BOTTLE FOR 5¢**

# THAN VINES

**\$15.99**

**Zolo Gaucho Select  
Malbec  
Argentina '08**

92 PTS WILFRED WONG Ripe-rippy flavors fuse onto the palate to create a fascinating, easy, and alluring wine that's long and persistent.

ClubBev! **SECOND BOTTLE FOR 5¢**



**\$15.99**

**Zolo Gaucho Select  
Torrontes  
Argentina '08**

92 PTS WILFRED WONG Simply stunning, wildly aromatic; raises the bar with a palate of jasmine and roses; excellent, crisp aftertaste.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$16.99**

**Norton  
Barrel Select Malbec  
Argentina '06**

90 PTS WILFRED WONG Long lasting and enveloping; frisky Malbec penetrates the palate with exceptional ripe black-fruit qualities.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$16.99**

**Montgras  
Cabernet-Syrah  
Chile '08**

91 PTS WILFRED WONG Muscular and chewy, tartlike and black-fruited, this blend hits the palate with force; aftertaste loaded with fruit.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$16.99**

**Lalande  
Malbec  
Argentina '07**

91 PTS WILFRED WONG Lasts long and lovingly on the palate; almost round; stands up well in the aftertaste; try with a grilled rib eye.

ClubBev! **SECOND BOTTLE FOR 5¢**

the Moon, Ballan-Larquette, EOS, Lockwood, and many more.

**BevMo!** 1470 Enea Circle, Suite 1600  
Concord, CA 94520

PRESORT  
STD  
U.S. POSTAGE  
PAID  
ADMAIL WEST



**The 5¢ Sale**  
starts Wednesday, 2/10.

CA-P011D

Please drink responsibly.

Postmaster:  
Please deliver 2/8-2/10



**BUY ONE WINE, GET  
THE SECOND FOR 5¢**

**MORE THAN  
200 WINES!**

**\$11.99**  
**Penfolds Koonunga Hill  
Shiraz  
SE Australia '06**

87 PTS WILFRED WONG A fine, easy-  
drinking red wine; soft but sturdy on the palate;  
smooth tannins give additional structure.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$19.99**  
**Château Brandy  
Bordeaux  
France '08**

92 PTS WILFRED WONG Rock solid  
and full flavored; surpasses most  
Bordeaux rouges on the international  
market; delicious now.

ClubBev! **SECOND BOTTLE FOR 5¢**



**\$7.99**  
**Chellis Lane  
Chardonnay  
California '08**

BRONZE MEDAL 2010 SF CHRONICLE WINE  
COMP Fine and breezy; zips through the  
palate like a New York taxi driver on a crowded  
Manhattan street.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$9.99**  
**Arancio  
Pinot Noir  
Sicily '08**

A ripe and fresh red that's soft and smooth  
on the palate and has an easy finish.

ClubBev! **SECOND BOTTLE FOR 5¢**

**\$16.99**  
**Guenoc  
Petite Sirah  
Lake County '06**

88 PTS WILFRED WONG A fine grapey  
wine that's fun yet serious; perfect to serve  
to the gang along with comfort food on a  
cool night.

ClubBev! **SECOND BOTTLE FOR 5¢**



STARTING 2/10, VISIT **BevMo.com** FOR A COMPLETE LIST OF 5¢ SALE WINES.

Limited to supplies on hand. Vintages subject to change. All bottles are 750ml unless otherwise noted. We reserve the right to correct any typographical errors.  
5¢ Sale: Must be a ClubBev! member, and valid on select wines only. Price of first bottle is BevMo's regular, undiscounted price. Second bottle must be the same as  
the bottle purchased at full price. Prices and sale effective through March 22, 2010.

## Your pocket guide to the BevMo! 5¢ Wine Sale

### REDS

Arancio Pinot Noir '08	\$9.99
Aresti RSV Syrah '08 • 90 PTS WW	\$15.99
Bannus RSV Pinot Noir '07 • 90 PTS WW	\$24.99
Callaway Cab '08	\$8.99
Canon Ridge Merlot '05 • 87 PTS WW	\$19.99
Challis Lane Cab '08 • 90 PTS WW	\$7.99
Château Brandy Bordeaux '08 • 92 PTS WW	\$19.99
Coppola Diamond Petite Sirah '07 • 87 PTS WW	\$18.99
Gnarly Head Merlot '04 • BRONZE CSFWC	\$12.99
Guenoc Petite Sirah '06 • 88 PTS WW	\$16.99
Hahn Estates Syrah '08 • GOLD '10 SFCWC	\$14.99
Irony Cab '07 • 88 PTS WW	\$15.99
Irony Pinot Noir '07 • 88 PTS WW	\$15.99
Kenwood RSV Zinfandel '07 • 91 PTS WW	\$27.99
Kumbaya Red • 88 PTS WW	\$11.99
Lalanda Malbec '07 • 91 PTS WW	\$16.99
Line 39 Cab '06 • 88 PTS WW	\$15.99
Little Penguin Pinot Noir '08 • 86 PTS WW	\$7.99
Michael Pozzan Knights Vly Cab '07 • SILVER SHF	\$19.99
Michael Pozzan Merlot '07 • 87 PTS WW	\$16.99
Montgraa Cab-Syrah '08 • 81 PTS WW	\$16.99
Nina North 10 Mile Red '06 • 88 PTS WW	\$10.99
Norton Barrel Select Malbec '06 • 90 PTS WW	\$16.99
Penfolds Shiraz '06 • 87 PTS WW	\$11.99
Powder Keg Petite Sirah '07 • 92 PTS WW	\$19.99
Powder Keg Zinfandel '07 • 90 PTS WW	\$19.99
Red Bicycleette Pinot Noir '08	\$12.99
Shiloh Road Cab '07 • 89 PTS WW	\$16.99
Sonoma Landing Merlot '06 • 87 PTS WW	\$9.99
Sterling LB Meritage '06 • 88 PTS WW	\$29.99
Talus Cab '07 • 87 PTS WW	\$8.99
Unruly Red '08 • 89 PTS WW	\$11.99
Valley of the Moon Pinot Noir '08 • BRONZE SFCWC	\$22.99
Vigilance Cab '07 • 91 PTS WW	\$17.99
Wildhurst Merlot '04 • 89 PTS WW	\$16.99
Woodbridge SVS Merlot '08 • 86 PTS WW	\$8.99
Zig Zag Zin Zinfandel '07 • 90 PTS WW	\$14.99
Zolo Gaucho Select Malbec '08 • 92 PTS WW	\$15.99
Zynthesis Old Vine Zinfandel '07 • 91 PTS WW	\$15.99

ClubBev! **SECOND BOTTLE FOR 5¢**

... and over 80 more reds to choose from!

CSFWC = CA State Fair Wine Comp.  
SFCWC = San Francisco Chronicle Wine Comp, SHF = Sonoma Harvest Fair,  
WW = Willfred Wong, WS = Wine Spectator



## Your pocket guide to the BevMo! 5¢ Wine Sale

### WHITES

Bannus RSV Chard '06 • 91 PTS WW	\$24.99
Beringer Sauv Blanc '06 • 87 PTS WS	\$12.99
Bridlewood Viognier '07 • GOLD '09 SFCWC	\$19.99
Challis Lane Chard '08 • BRONZE SFCWC	\$7.99
Challis Lane Sauv Blanc '08 • BRONZE CSFWC	\$7.99
Discovery Sauv Blanc '08 • 90 PTS WW	\$17.99
Dry Creek Vineyard Chard '07 • 88 PTS CG	\$18.99
Gnarly Head Chard '07 • GOLD '09 CSFWC	\$12.99
Guenoc Sauv Blanc '08 • 88 PTS WW	\$12.99
Headstand Sauv Blanc '08 • 88 PTS WW	\$12.99
Kumbaya White NV • 88 PTS WW	\$11.99
Line 39 Sauv Blanc '08 • 89 PTS WW	\$12.99
Lockwood Chard '08 • 89 PTS WW	\$12.99
Loredona Pinot Grigio '07 • 88 PTS WW	\$11.99
Louis Martini Chard '07	\$19.99
Main Street Chard '08 • SILVER SFCWC	\$11.99
Main Street Sauv Blanc '07 • 85 PTS WW	\$11.99
Mezzacorona P. Grigio '08 • 86 PTS, BEST BUY, WE	\$8.99
Michael Pozzan Chard '08 • 89 PTS WW	\$14.99
Montevina Chard '08 • SILVER SFCWC	\$12.99
Shannon Ridge Chard '08 • BRONZE CSFWC	\$12.99
Shiloh Road Chard '08 • 90 PTS WW	\$16.99
Sonoma Landing Chard '05 • 85 PTS WW	\$9.99
Trinity Oaks Chard '08 • 86 PTS WW	\$9.99
Wildhurst RSV Sauv Blanc '05 • 86 PTS WW	\$13.99
Windmill Chard '06	\$10.99
Woodbridge SVS Chard '07 • 87 PTS WW	\$8.99
Zolo Gaucho Select Torrontes '08 • 92 PTS WW	\$15.99

ClubBev! **SECOND BOTTLE FOR 5¢**

... and over 50 more whites to choose from!

CG = CA Grapevine, CSFWC = CA State Fair Wine Comp,  
SFCWC = SF Chronicle Wine Comp, WE = Wine Enthusiast,  
WS = Wine Spectator, WW = Willfred Wong

## TASTINGS

Come taste our 5¢ Sale wines  
each Saturday.  
Check the store for schedule.

February 13, 20, and 27  
March 6, 13, and 20

**EXHIBIT 9**

**EXHIBIT 9-A**

**BEVMO WEBSITE HOMEPAGE – OCT. 20, 2009**



Welcome **Customer**. You have 0 Item(s) in your [Shopping Basket](#)   [Checkout](#)   [Track an Order](#)   [FAQ](#)

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Go

**EARN A  
5% REWARD!**  
CLICK FOR DETAILS



Pick Up Your  
Order in 1 Hour!

My current choice is

Ship  to CA

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[Merlot](#)  
[Other Reds](#)  
[Other Whites](#)  
[Pinot Noir](#)  
[Riesling](#)  
[Rose/Pinkish](#)  
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[Syrah/Shiraz](#)  
[Zinfandel](#)

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[Bourbon](#)  
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[Prepared Cocktails](#)  
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[Tequila](#)  
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## Most Popular Links:

[Highly-rated Craft Brews on ClubBev](#)  
[Premium Spirits](#)

**Buy One Wine,  
Get the Second Bottle for 5c!**

[View All 5c Wines >](#)

Over 200 wines! Check out some of the exceptional wines in the 5c sale!

Second bottle must be the same as the bottle purchased at full price\*. ClubBev! membership required.

**5c RED WINES >**

[Shop all 5c Red Wines!](#)

**5c WHITE WINES >**

[Shop all 5c White Wines!](#)

**VINEYARD PARTNERS >**

[Shop all 5c Vineyard Partners Wines!](#)

**CAZADORES >**

**SAVE \$20**

[Cazadores Tequila Reposado 1.75ltr only \\$49.99 ClubBev!](#)

**EL JIMADOR >**

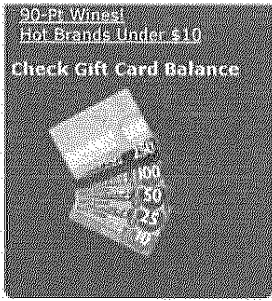
**SAVE \$14**

[El Jimador Anejo Tequila only \\$29.99 ClubBev!](#)

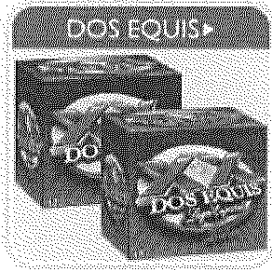
**CORZO ANEJO >**

**ONLY \$49.99**

[Corzo Anejo Tequila only \\$49.99!](#)



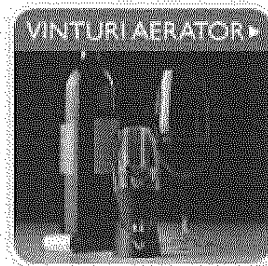
Sam Adams Brewer's Selection (24-PK) Brewer's Selection limited release!



Select Dos Equis 12-pks only \$11.99 ClubBev!



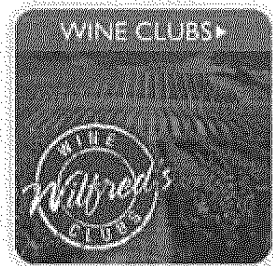
Anderson Peanut Butter Pretzel Nuggets (24 OZ) only \$6.99 ClubBev!



Wine needs to breathe: Vinturi Wine Aerator Only \$39.99!



Satisfy your craving for extra savings in every department!



Over 3,900 of the world's best wines, Champagne, and Ports. One tour guide. Join Wilfred's Wine Clubs today and pick up at your local BevMo!

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**EXHIBIT 8-B**

**BEVMO WEBSITE HOMEPAGE – FEB. 10, 2010**

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EARN A 5% REWARD!  
CLICK FOR DETAILS



Pick Up Your Order in 1 Hour!

My current choice is

Ship  to CA

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- [Italy](#)
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- [Hot Wines Under \\$10](#)

## SaveMo!



Save \$20 off any 12 bottles of Chellis Lanel.

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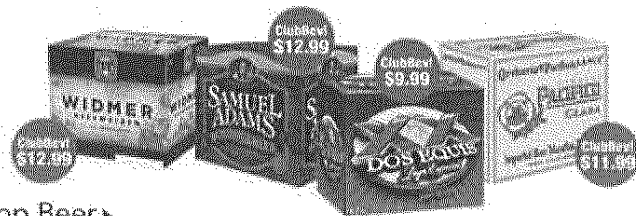


## MiXMo!

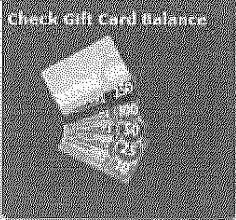


[Shop Spirits >](#)

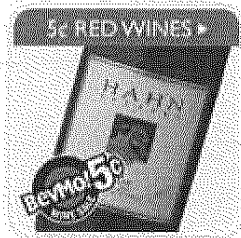
## ChillMo!



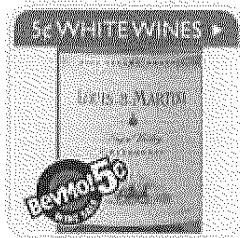
[Shop Beer >](#)



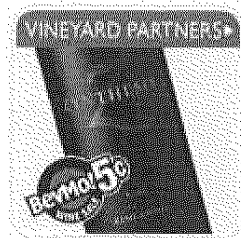
Find the Perfect Valentine's Gift! Shop Now >



Shop All 5¢ Red Wines!



Shop All 5¢ Red Wines!



Shop All Vineyard Partners 5¢ Wines!



Save \$4 now on X Rated Liqueur!



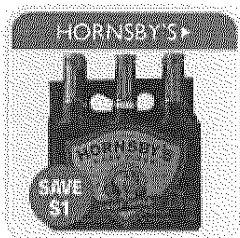
Save an extra \$3 on Sauza Tequila now! [Learn More >](#)



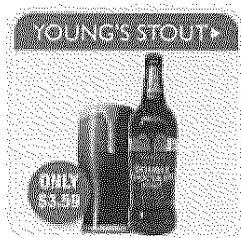
Stolichnaya Vanilla Vodka only \$17.99 ClubBev!



Share one with your sweetheart: Lindemans Framboise!



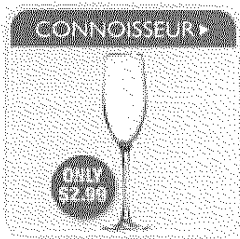
Add spice to your next party: Hornsby's Crisp Apple Cider 6-pk!



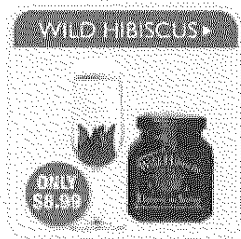
Indulge your chocolate craving: Young's Double Chocolate Stout!



Bring out the best in your wine: Vinturi Wine Aerator!



Don't forget the glasses for the bubbly: Connoisseur Flute (Single)!



Perfect with Champagne: Wild Hibiscus Flower In Syrup!

Sign up to receive our e-newsletter, and much more! Send us your [email address here](#).

*The 5-cent Wine Sale: Must be a ClubBev! member, and valid on select wines only. Price of first bottle is BevMo's regular, undiscounted price. Second bottle must be the same as the bottle purchased at full price. Limited time only.*

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