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Attorneys for Defendants RENEW HEALTH
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HEALTHCARE CENTER, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CORY DIEBOLD, an individual, on behalf of
himself, all others similarly situated, and the
State of California;

Plaintiffs,

vs.

RENEW HEALTH GROUP, LLC; PACIFIC
PARK HEALTHCARE CENTER, LLC; and
DOES 1-50,

Defendants.

Case No. 21GDCV01393

[Assigned Hon. David A. Rosen
Department E]

**JOINT STIPULATION RE DISMISSAL
OF PAGA ACTION WITHOUT
PREJUDICE; ~~PROPOSED~~ ORDER**

FILED
Superior Court of California
County of Los Angeles

09/13/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: D. Provencio Deputy

1 **STIPULATION**

2 Plaintiff CORY DIEBOLD (“Plaintiff”) and Defendant RENEW HEALTH GROUP, LLC
3 and Defendant PACIFIC PARK HEALTHCARE CENTER, LLC (collectively “Defendants”) by
4 and through their counsel of record, hereby stipulate and agree to the following:

5 WHEREAS, Plaintiff filed a Complaint against Defendants on December 15, 2021, alleging
6 a single cause of action pursuant to the Private Attorney’s General Act of 2004, codified as
7 California Labor Code Section 2698, et seq. (“PAGA”), in the Superior Court of the State of
8 California, Los Angeles County, Case No. 21GDCV01393 (the “PAGA Action”);

9 WHEREAS, the premise of Plaintiff’s PAGA Action was that Defendants had violated
10 Labor Code Sections 432.5, 923 and 925 by requiring Plaintiff to sign an arbitration agreement as a
11 condition of employment that contained and unlawful PAGA waiver;

12 WHEREAS, on June 8, 2022, Plaintiff initiated an arbitration against Defendants pursuant
13 to the parties’ arbitration agreement premised on claims unrelated to Plaintiff’s PAGA Action,
14 alleging breach of contract for failure to pay bonuses, violations of Labor Code sections 202 and
15 203 seeking waiting time penalties for failure to pay all wages upon resignation of employment (i.e.,
16 bonuses), violation of the Fair Credit Reporting Act (FCRA) and violation of California’s
17 Investigative Consumer Report Agencies Act (ICRAA);

18 WHEREAS, on June 15, 2022, the United States Supreme Court issued its decision in *Viking*
19 *River Cruises v. Moriana*, 142 S. Ct. 1906 (June 15, 2022), in which the Supreme Court held that
20 even if an arbitration agreement contains a “wholesale waiver of PAGA claims”, the arbitration
21 agreement may still be enforced if it contains a severability clause (*id.* at 1924-25);

22 WHEREAS, the arbitration agreement between Plaintiff and Defendants contains a
23 severability clause, thereby putting the viability of Plaintiff’s theory of liability in question under
24 *Viking River*;

25 WHEREAS, *Viking River* further held that an individual PAGA claim may be compelled to
26 arbitration and the remaining representative claims may be subject to dismissal, *id.* at 1925 (after
27 committing to an arbitral proceeding, “Moriana lacks statutory standing to continue to maintain her
28 non-individual claims in court, and the correct course is to dismiss her remaining claims”);

1 WHEREAS, on July 12, 2022, based on *Viking River*, the parties stipulated to add Plaintiff's
2 individual PAGA claim to Plaintiff's pending arbitration and to stay the PAGA Action;

3 WHEREAS, on August 10, 2022, the parties entered into an agreement to settle all of
4 Plaintiff's individual claims and to dismiss the PAGA Action *without prejudice*;

5 WHEREAS, no representative claims of other aggrieved employees of Defendants are
6 released under the parties' settlement agreement;

7 WHEREAS, Plaintiff has submitted a copy of this Joint Stipulation to the LWDA at the same
8 time it has submitted it to this Court.

9 THEREFORE, the parties agree and stipulate that:

10 The PAGA Action should be dismissed *with prejudice* as to Plaintiff's individual PAGA
11 claim and *without prejudice* as to the PAGA claims of the State and all other aggrieved employees.

12 IT IS SO STIPULATED.

13
14 DATED: September 13, 2022

MOSS BOLLINGER LLP



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16 _____
Jeremy F. Bollinger
17 Attorneys for Plaintiff CORY DIEBOLD

18 DATED: September 13, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

19
20 By: _____



21 Sumy Kim
22 Attorneys for Defendants RENEW HEALTH
23 GROUP, LLC and PACIFIC PARK
24 HEALTHCARE CENTER, LLC
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PROPOSED ORDER

The Court, having reviewed the parties' Joint Stipulation Re Dismissal of PAGA Action, and finding good cause, IT IS HEREBY ORDERED:

1. Plaintiff CORY DIEBOLD's ("Plaintiff") individual claims in this action against Defendants RENEW HEALTH GROUP, LLC and Defendant PACIFIC PARK HEALTHCARE CENTER, LLC ("Defendants") are dismissed WITH PREJUDICE.

2. Plaintiff's claims brought on behalf of the State and all other aggrieved employees in this action against Defendants are dismissed WITHOUT PREJUDICE.

3. Each party shall bear its own attorneys' fees and costs.

IT IS SO ORDERED.

Dated: 09/13/2022



A handwritten signature in black ink, appearing to read "D. A. Rosen", is written over a horizontal line.

JUDGE OF THE SUPERIOR COURT
David A. Rosen/Judge

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Diebold v. Renew Health Group, LLC
CASE NO. 21gdcv01393

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403.

On September 13, 2022, I served the document(s) described as **JOINT STIPULATION RE DISMISSAL OF PAGA ACTION WITHOUT PREJUDICE; [PROPOSED] ORDER** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Joseph R. Lordan (Joseph.Lordan@lewisbrisbois.com)
Sumy Kim (Sumy.Kim@lewisbrisbois.com)
LEWIS BRISBOIS BISGAARD & SMITH LLP
333 Bush Street, Suite 1100
San Francisco, CA 94104
*Counsel for Defendant Renew Health Group, LLC
and Pacific Park Healthcare Center LLC*

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

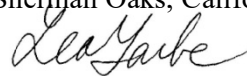
☒ **BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed September 13, 2022 at Sherman Oaks, California.

Lea Garbe
Type or Print Name


Signature

PROOF OF SERVICE