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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for All Purposes to Hon. John D.
Freeland, Department 23*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 13, 2024

Time: 8:30 a.m.

Dept.: 23

Judge: Hon. John D. Freeland

Filed: December 14, 2022

FAC Filed: May 5, 2023

Trial Date: None Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 13, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 23 of the above-entitled Court, Plaintiff Karina Brown, individually and on behalf of all other similarly situated individuals, will, and hereby does, move for entry of an Order for the following:

1. Preliminarily certifying the proposed class herein for purposes of settlement;
2. Preliminarily appointing Plaintiff Karina Brown as class representative for purposes of settlement;
3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
4. Preliminarily approving the proposed class action and Private Attorney's General Act settlement, in the amount of \$465,000, which is incorporated herein by reference;
5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in the amount of 35% of the Gross Settlement Amount;
6. Preliminarily approving the application for payment to Class Counsel of reasonable costs not to exceed \$15,000;
7. Preliminarily approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for payment to ILYM Group, Inc., for administering said class action settlement in an amount not to exceed \$10,000;
8. Preliminarily approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff Karina Brown;
9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for the total amount of \$65,000, 75% of which will be paid to the Labor and Workforce Development Agency and 25% of which will be paid to Aggrieved Employees;
10. Approving as to form and content the Notice of Settlement, which provides Class Members information regarding the settlement, their ability to opt out of, or object to, the class action settlement and which provides instruction on how to dispute an individual's settlement allocation under the proposed settlement agreement;

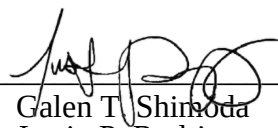
- 1 11. Approving the proposed procedures to notify the class and determining that the proposed
2 notification procedures and process comply with Class Members' due process rights and
3 directing the Notice of Settlement to be sent by first class mail to Class Members;
4 12. Directing Defendant to report employment information, including social security numbers, to
5 the Settlement Administrator to administer the settlement proceeds;
6 13. Scheduling a fairness hearing on the question of whether the proposed settlement should be
7 finally approved as fair, reasonable, and adequate;
8 14. Directing that any amount from settlement checks that were not cashed by the check cashing
9 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
10 Rights under the doctrine of *cy pres*;
11 15. Preliminarily and conditionally approving and adopting the Proposed Order and its
12 implementation schedule, which is filed herewith and incorporated by reference.

13 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
14 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
15 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
16 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
17 of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Karina Brown,
18 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
19 hearing of this motion.

20 **Pursuant to Local Rule 3.01, tentative rulings will be issued on law and motion matters the court**
21 **day prior to the hearing date. Tentative rulings can be accessed on the Internet at**
22 **<https://www.stanislaus.courts.ca.gov/> after 1:30 p.m. You may request a hearing on a law and**
23 **motion matter by calling the calendar line at (209) 530-3162 prior to 4:00 p.m. or by e-mailing at**
24 **civil.tentatives@stanct.org. Email requests must be made prior to 4:00 p.m. AND confirmed by**
25 **return e-mail. If you do not receive a confirmation e-mail from the clerk, you MUST call (209)**
26 **530-3162 to request your hearing. If you request a hearing on a law and motion matter, you must**
27 **also notify the opposing party or their counsel of your request.**

28 Dated: May 7, 2024

Shimoda & Rodriguez Law, PC

By: 
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Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

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6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **FOR THE COUNTY OF STANISLAUS**

11 KARINA BROWN, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 C.W. BROWER, INC., a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. CV-22-005735

CLASS ACTION

*Assigned for All Purposes to Hon. John D.
Freeland, Department 23*

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 13, 2024

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27	<i>Williams v. MGM-Pathe Communications Co.</i> , 129 F.3d 1026 (9th Cir. 1977)	15
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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Karina Brown (“Plaintiff”) seeks preliminary approval of a wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$465,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendant C.W. Brower, Inc., (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 977 Class Members.

Plaintiff has alleged that Defendant 1) failed to pay overtime wages, 2) failed to pay minimum wages, 3) failed to provide accurate wage statements, 4) failed to timely pay final wages, 5) violated Labor Code Section 432.7, 6) violated Labor Code Section 432.6, and; 7) unfairly competed against other businesses. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 2. Plaintiff has also alleged Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-12 Declaration of Karina Brown (“Decl. Brown”) ¶ 9.

It is well within the discretion of this Court to grant preliminary approval of the Agreement as it satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1) certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the

1 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in
2 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

3 **II. PROCEDURAL AND LITIGATION HISTORY**

4 Plaintiff filed a class action complaint on approximately December 14, 2022, in Stanislaus
5 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
6 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
7 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
8 approximately May 2, 2023, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
9 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 5.

10 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

11 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
12 potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Decl. Brown ¶¶ 5-6. Plaintiff worked during
13 the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided
14 information regarding these policies and practices, enabling pre-filing investigations to take place. *See*
15 Decl. Brown, ¶¶ 2, 5-6. The Parties engaged in informal discovery and exchange of documents,
16 including a representative sampling of employee data, such as timecards, paystubs, payroll data, and
17 relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The
18 discovery covered all aspects of the asserted claims, including certification issues, merits issues,
19 damages, the scope and configuration of Class Members, the content and implementation of the wage
20 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
21 *See* Decl. Rodriguez, ¶¶ 6-7. The information allowed Plaintiff to determine the extent and frequency
22 of any violations in accordance with Plaintiff's contentions and create an accurate damages model to
23 assess the reasonableness of any settlement. *See id.*

24 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

25 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

26 The final settlement occurred only after extended, arm's length negotiations. Over the course of
27 approximately fifteen (15) months, Plaintiff has been investigating the claims and discussing with
28 Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶ 8. The Parties

1 exchanged substantial amounts of information and legal analysis in connection with these discussions.
2 *See id.* It was only after these extended discussions, which included a full day mediation with Mark
3 LeHocky and a mediator’s proposal, that the Parties were able resolve all claims and enter into the
4 Agreement. *See id.* at ¶ 8.

5 **b. The Terms of the Agreement**

6 1. The following groups of individuals are covered by the Agreement:

- 7
- 8 • “Class Member(s)” shall include (1) for the First through Fourth and Seventh Causes of
9 Action, all hourly non-exempt employees who have or continue to work for Defendant in
10 California from December 14, 2018, to March 19, 2024 (“Employee Subclass”); and (2)
11 for the Fifth and Sixth Causes of Action, all individuals who applied to work for
12 Defendant in California, regardless of whether or not they were ultimately hired from
13 December 14, 2019, to March 19, 2024, (“Applicant Subclass”). *See* Exhibit A, ¶ 1.5;
14
 - 15 • “Aggrieved Employee(s)” shall include (1) all hourly non-exempt employees who have
16 or continue to work for Defendant in California from December 9, 2021, up to March 19,
17 2024 (“PAGA Employees Subclass”); and (2) all individuals who applied to work for
18 Defendant in California, regardless of whether or not they were ultimately hired from
19 December 9, 2021, up to March 19, 2024, whichever is earlier (“PAGA Applicant
20 Subclass”). *See* Exhibit A, ¶ 1.2.

21 There are approximately 977 total Class Members, which includes approximately 555
22 individuals within the Employee Subclass and 422 individuals within the Applicant Subclass. *See*
23 Decl. Rodriguez, ¶ 11.

24 2. Defendant will pay the Gross Settlement Amount of \$465,000, which is exclusive of the
25 employer’s share of payroll taxes. *See* Exhibit A at ¶ 5.1. No portion of the Gross Settlement Amount
26 will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the
27 PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

28 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
5.4.

4. Subject to Court approval, the Parties have selected ILYM Group, Inc., to act as the
Settlement Administrator, who has provided a maximum cost estimate of 10,000. *See* Exhibit D
(ILYM Group, Inc. Quote); Exhibit A, ¶ 1.33; Decl. Rodriguez, ¶ 22.

1 5. The Parties agree that \$65,000 of the Gross Settlement Amount shall be allocated to
2 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
3 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
4 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
5 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
6 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
7 believes the \$65,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
8 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 6-12; *see also Nordstrom Com.*
9 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
10 based on their being disputed and being part of a class settlement which was evaluated based on the
11 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
12 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
13 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
14 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
15 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA
16 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
17 *Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
18 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
19 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
20 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
21 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
22 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
23 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
24 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
25 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
26 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
27 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
28 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,

2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to Thirty-Five (35%) of the Gross Settlement Amount (\$162,750) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$15,000. *See id.* The proposed notice to be sent to Class Members will state this information. *See* Exhibit F.

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

8. Class Members who fail to timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,

1 including providing representation for employees in wage claims before the California Labor
2 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 25-30.

3 **c. Allocation of Settlement Funds**

4 Payment to Participating Class Members and Aggrieved Employees will not require the
5 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
6 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
7 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
8 the Court. The Net Settlement Amount will be allocated among two subclasses, the Employee Subclass
9 and the Applicant Subclass. Class Members shall not be members of both subclasses. To the extent a
10 Class Member was hired and performed any work for Defendant, the Class Member shall be a part of
11 the Employee Subclass. Four percent (4%) of the Net Settlement Amount shall be allocated to the
12 Applicant Subclass and 96% of the Net Settlement Amount shall be allocated to the Employee
13 Subclass. Each Employee Subclass member's share will be determined by dividing their total weeks
14 worked within the Class Period by the total weeks worked by all Employee Subclass members within
15 the Class Period. That fraction will then be multiplied by the portion of the Net Settlement Amount
16 allocated to the Employee Subclass to arrive at the individual's share of the Net Settlement Amount. As
17 the Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of
18 the Net Settlement Amount allocated to the Applicant Subclass will be divided equally among all
19 individuals within the Applicant Subclass. The allocation of the PAGA Payment between the PAGA
20 Employee Subclass and the PAGA Applicant Subclass will follow a similar allocation. *See* Exhibit A,
21 at ¶¶ 1.17, 5.5, 5.8; Decl. Rodriguez, ¶ 11.

22 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
23 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
24 **CIRCUMSTANCES**

25 It is not required that Class Members be given actual notice of a class settlement; instead, the
26 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
27 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
28 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
Linkus Enters., 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.

1 1994), the Court rejected a class member's argument that he had not received due process because he
2 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
3 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
4 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
5 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice
6 mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members
7 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
8 held to be part of the class settlement because they received the best notice practicable under the
9 circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7
10 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar
11 approach regarding providing notice to class members.

12 Under the proposed notice procedures, Class Members will have sixty (60) days from the date
13 of mailing to review and respond to the Notice of Settlement, which will also be available online. *See*
14 Exhibit A, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
15 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
16 *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
17 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
18 means of ensuring Class Members receive the notice mailing. *See* Exhibit A, ¶¶ 7.3-7.4. Any
19 individual whose initial mailing was deemed undeliverable will have additional time to respond. *See*
20 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
21 objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class
22 actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class
23 Members satisfy due process and should be approved in this case.

24 **VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR,**
25 **REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE**
26 **FACTS OF THIS CASE**

27 A class action may not be dismissed, compromised, or settled without Court approval and the
28 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules

of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to determine only whether it is within the range of possible approval such that notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
2 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
3 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small.” *Id.* at 1802.

6 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
7 **Negotiations Between the Parties**

8 Settlement of this case was reached only after substantial litigation and extensive arm’s length
9 negotiations lasting nearly fifteen (15) months, which included a full day mediation and mediator’s
10 proposal. *See* Decl. Rodriguez, ¶ 8. At all times, the negotiations were adversarial, although still
11 professional in nature. *See id.*

12 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
13 **Information to Enter Into an Informed and Reasonable Settlement**

14 The Parties were in possession of all necessary information during the negotiations. The Parties
15 engaged in substantial informal discovery, which included all necessary components for evaluating the
16 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-12. Plaintiff was in possession of
17 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
18 make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the
19 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
20 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
21 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

22 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

23 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA
24 actions. *See* Decl. Rodriguez, ¶¶ 15-20. Thus, Plaintiff’s counsel are qualified to evaluate the class
25 claims, the value of settlement versus moving forward with litigation, and viability of possible
26 affirmative defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in
27 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
28 benefit to Class Members. *See id.*

1 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
2 **Plaintiff's Case and the Risks and Costs of Further Litigation**

3 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
4 were heavily disputed by Defendant. *See* Decl. Rodriguez, ¶ 5. Based on the records and facts of this
5 case, Plaintiff has secured a gross recovery of approximately 16% of the maximum likely value of the
6 claims in this matter and a net recovery of approximately 8% of the maximum likely value of the
7 claims. The average net award is approximately \$233.88. *See id.* at ¶¶ 9-10.

8 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
9 percentile ranges of the total available damages that have been approved in other class settlements. *See*
10 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
11 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
12 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
13 settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than
14 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
15 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
16 (approving a settlement where the net recovery to class members was approximately 7.5% of the
17 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
18 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
19 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
20 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
21 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
22 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class
23 Members will receive an average of approximately \$198.70, with the highest payment to a Class
24 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
25 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
26 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
27 results achieved in this case were very favorable. Class members are provided with immediate
28

monetary relief, with an average award of around several hundred dollars and a minimum award of \$50”).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in class action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if a plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

Plaintiff has thoroughly set forth the maximum range of recovery in this litigation as well as the data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 6-11. The record demonstrates that the compromises made by Plaintiff was reasonable and have resulted in a settlement with recovery percentage well within the range of what has been found to be sufficient in several other cases. *See, supra*, Section VI.a.iv; *see also* *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery”).

b. Provisional Certification of the Class is Appropriate

Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or

defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative Class Members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 977 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

The common questions of law and fact in this case stem from Plaintiff’s contention that Defendant violated California law by 1) failing to pay employees for all hours worked by unlawfully rounding employees’ hours where it had the ability to track all actual hours worked and ultimately

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 rounded hours worked in a way that systematically benefited Defendant, 2) failing to incorporate the
2 value of nondiscretionary bonuses paid to employees when they successfully passed a police decoy
3 alcohol sting into Plaintiff's and putative Class Members' regular rates of pay for the purpose of
4 calculating overtime wages, 3) failing to accurately itemize the hours and wages earned on paystubs
5 issued to Class Members, 4) providing wage statements that did not include the inclusive dates of the
6 period for which the employee is paid, 5) taking customer's tips for Plaintiff and similarly situated
7 employees and included those tips in its revenues, and 6) maintaining a criminal history disclosure
8 policy that unlawfully required disclosure of arrests and gang related activity not resulting in
9 conviction. *See* Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are
10 derivative of these violations. *See id.* Plaintiff and the Class Members seek the same remedies under
11 state law. Under these specific circumstances, the commonality and predominance requirements are
12 satisfied. Regarding the typicality requirement, Plaintiff contends she suffered from the same unlawful
13 policies, treatment, and circumstances as Class Members did, will request the same remedies, and will
14 rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality
15 requirement is also satisfied for settlement purposes.

16 **iii. The Adequacy Requirement is Met**

17 The adequacy of representation requirement is met if the named representative and counsel have
18 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
19 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
20 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
21 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
22 number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class
23 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
24 of workweeks stated in the Notice of Settlement (Exhibit F).

25 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
26 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
27 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
28 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter

engaged Defendant's counsel in settlement discussions over the course of approximately fifteen (15) months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

VII. ATTORNEY'S FEES AND COSTS, ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND SETTLEMENT ADMINISTRATOR ARE REASONABLE AND SHOULD BE AWARDED

i. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the Putative Class Is Reasonable and Routinely Awarded by Courts

The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

In this case, Plaintiff provided and explained documents, being available at all times to discuss the case with Plaintiffs' counsel. *See* Decl. Rodriguez, ¶ 7; Decl. Brown, ¶¶ 5-6. Plaintiff spent a significant amount of time pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on individual claims in front of the California Labor Commissioner. *See id.* ¶ 4. Additionally, Plaintiff agreed to a general release of claims, which is broader than any release Class Members are subject to. *See* Exhibit A at ¶¶ 1.8, 6.3. An Enhancement Payment of \$10,000.00 is appropriate given the risk, assistance, time required in bringing this case and the resolution of this case.

1 **ii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
2 **and Customarily Approved by Courts**

3 California state and federal courts have recognized that when a litigant's efforts create or
4 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
5 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
6 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
7 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
8 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
9 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
10 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
11 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
12 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
13 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
14 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
15 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
16 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

17 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
18 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
19 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886
20 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class
21 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
22 on her behalf." *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
23 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
24 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
25 Plaintiff and Plaintiff's counsel were able to negotiate on behalf of the class, and the fee can be shifted
26 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
27 fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted
28 practice in wage and hour class action settlements to award attorney's fees based on a percentage of the
 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*

1 of *Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
2 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

3 Historically, attorney's fee awards in common fund cases in general range from 20% to 50% of
4 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
5 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
6 generally approved as reasonable in wage and hour settlements below \$10 million:

7 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
8 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
9 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
10 recent wage and hour class actions where federal district courts approved attorney fee
11 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
12 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

13 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff's
14 request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates
15 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
16 benefits achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal.
17 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v.*
18 *Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske*
19 *Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*,
20 USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern
21 District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case
22 No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the
23 percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied
24 in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there
25 are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D.
26 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10,
27 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further
28 supports finding the fee request reasonable").

1 These factors support Plaintiff's request for reasonable attorney's fees. The typical percentage
2 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
3 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
4 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs'
5 request of 35% falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶ 21. The quality of
6 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
7 (\$233.88) also support the fee request when compared to other settlements courts have considered as
8 good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
9 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to
10 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
11 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
12 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
13 results achieved in this case were very favorable. Class members are provided with immediate
14 monetary relief, with an average award of around several hundred dollars and a minimum award of
15 \$50").

16 **iii. The Court Should Approve the Payment of Settlement Administrator Costs**

17 Under the Agreement, a maximum of \$10,000 was set aside for potential Settlement
18 Administrator Costs. ILYM Group, Inc.'s estimated costs will not exceed \$10,000. The amount is
19 also within ranges approved by Courts and should be approved in this case. *See Patel v. Nike Retail*
20 *Servs., Inc.*, 2019 WL 2029061, *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was
21 not excessive where PAGA group consisted of 40 employees); Decl. Rodriguez, ¶ 22. Plaintiff requests
22 that the Court approve the allocated amount for payment to the Settlement Administrator to compensate
23 it for the costs of administration.

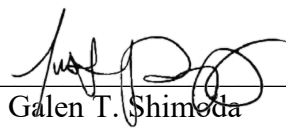
24 **VIII. CONCLUSION**

25 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
26 conditionally certify the class for settlement purposes; grant preliminary and conditional approval of the
27 proposed settlement; approve the proposed notification procedures, including the Notice of Settlement
28

1 and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of Plaintiff's
2 proposed order is being filed concurrently herewith.

3
4
5
6
7 **Shimoda & Rodriguez Law, PC**

8
9 Dated: May 7, 2024

By: 

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiff

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Attorneys for Plaintiff KARINA BROWN
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No. CV-22-005735

*Assigned for All Purposes to Hon. John D.
Freeland, Department 23*

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 13, 2024

Time: 8:30 a.m.

Dept.: 23

Judge: Hon. John D. Freeland

Filed: December 14, 2022

FAC Filed: May 5, 2023

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	ILYM Group, Inc. Bid
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: May 7, 2024

Shimoda & Rodriguez Law, PC

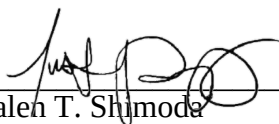
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

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Attorneys for C.W. BROWER, INC.

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,
Defendant.

Case No.: CV-22-005735

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: December 14, 2022
FAC Filed: May 2, 2023
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Karina Brown (“Plaintiff”), on behalf of herself, the Labor and Workforce
3 Development Agency, Class Members, and Aggrieved Employees, and Defendant C.W. Brower, Inc.,
4 (“Defendant”). This Agreement is subject to the terms and conditions set forth below and the approval of
5 the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Brown v. C.W. Brower, Inc.*, Stanislaus County
9 Superior Court, Case No. CV-22-005735, filed December 14, 2022.

10 1.2 “Aggrieved Employee(s)” shall include (1) all hourly non-exempt employees who have or
11 continue to work for Defendant in California from December 9, 2021, up to either (a) the date a signed
12 order preliminarily approving the settlement is filed, or (b) March 19, 2024, whichever is earlier (“PAGA
13 Employees Subclass”); and (2) all individuals who applied to work for Defendant in California, regardless
14 of whether or not they were ultimately hired from December 9, 2021, up to either (a) the date a signed
15 order preliminarily approving the settlement is filed, or (b) March 19, 2024, whichever is earlier (“PAGA
16 Applicant Subclass”).

17 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
18 Regarding Class Action and PAGA Settlement and Release.

19 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
20 Shimoda & Rodriguez Law, PC.

21 1.5 “Class Member(s)” shall include, (1) for the First through Fourth and Seventh Causes of
22 Action, all hourly non-exempt employees who have or continue to work for Defendant in California from
23 December 14, 2018, to (a) the date a signed order preliminarily approving the class settlement is filed, or
24 (b) March 19, 2024, whichever is earlier (“Employee Subclass”); and shall include, (2) for the Fifth and
25 Sixth Causes of Action, all individuals who applied to work for Defendant in California, regardless of
26 whether or not they were ultimately hired from December 14, 2019, to (a) the date a signed order
27 preliminarily approving the class settlement is filed, or (b) March 19, 2024, whichever is earlier (“Applicant
28 Subclass”).

1 1.6 “Class Period” includes, (1) for the Employee Subclass, December 14, 2018, through (a) the
2 date a signed order preliminarily approving the class settlement is filed, or (b) March 19, 2024, whichever
3 is earlier; and (2) for the Applicant Subclass, from December 14, 2019, to (1) the date a signed order
4 preliminarily approving the class settlement is filed, or (2) March 19, 2024, whichever is earlier.

5 1.7 “Class Representative” means Plaintiff Karina Brown.

6 1.8 “Class Representative’s Released Claims” means all claims arising from, that could have
7 been asserted, or related in any way to the Class Representative’s employment with Defendant, under
8 federal, state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown,
9 and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual
10 or common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special
11 damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs,
12 restitution, equitable relief or other similar relief or claims. The Class Representative’s Released Claims
13 exclude claims for workers’ compensation, unemployment insurance benefits, or other claims that cannot
14 be released as a matter of law.

15 1.9 “Operative Complaint” means the operative First Amended Complaint on file in the Action
16 with the Court, a copy of which is attached hereto as **Exhibit 1**.

17 1.10 “Court” means the Stanislaus County Superior Court.

18 1.11 “Defendant” means C.W. Brower, Inc.

19 1.12 “Defendant’s Counsel” means Julie A. Marquis and Dane M. Willis of Freeman Mathis &
20 Gary, LLP.

21 1.13 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
22 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
23 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
24 Representative as a Participating Class Member.

25 1.14 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
26 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
27 after a signed order approving this settlement has been filed provided no appellate proceeding having been
28 filed; or (b) the seventh (7th) calendar day after any appellate proceeding opposing the settlement has been

1 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
2 further remedies or relief, whichever is later.

3 1.15 “Final Approval Date” means the date a signed order granting final approval of this
4 Agreement is filed with the Court.

5 1.16 “Gross Settlement Amount” is the sum of Four Hundred Sixty-Five Thousand Dollars
6 (\$465,000).

7 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
8 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
9 Sections 1.19, 1.23, 5.5, and 5.8.

10 1.18 “LWDA” means the California Labor and Workforce Development Agency.

11 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
12 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
13 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
14 Payment to the Class Representative.

15 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
16 **Exhibit 2.**

17 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
18 Settlement to Class Members and Aggrieved Employees.

19 1.22 “PAGA” means the Private Attorneys General Act.

20 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
21 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

22 1.24 “PAGA Claim Period” means from December 9, 2021, up to either (1) the date a signed order
23 preliminarily approving the settlement is filed, or (2) March 19, 2024, whichever is earlier.

24 1.25 “Parties” means Defendant and Plaintiff.

25 1.26 “Participating Class Member” means any and all Class Members who have not made any
26 timely request to opt-out of the Agreement.

27 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
28 of this Agreement is filed with the Court.

1 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
2 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
3 under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
4 remain the property of Defendant until the payments required under the Agreement are made.

5 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
6 Employees during the Class Period and/or PAGA Claim Period, respectively, in California as determined
7 via their Payroll Data. CWB will provide the number of workweeks worked by Class Members during the
8 Class Period, and the number of workweeks worked by Aggrieved Employees during the PAGA Claim
9 Period. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks and a determination
10 as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a
11 particular workweek shall be construed from Defendant’s records.

12 1.30 “Released Class Claims” means any and all class claims that are alleged in the Operative
13 Complaint on behalf of the Class Members, and any additional wage and hour claims that could have been
14 brought based on the facts alleged in the Operative Complaint for any and all of those claims, through the
15 Class Period. The Operative Complaint is attached hereto as **Exhibit 1**. This release excludes the release
16 of claims not permitted by law. The Released Class Claims exclude claims for workers’ compensation or
17 unemployment insurance benefits. This release will cover all Class Members who do not opt out.

18 1.31 “Released PAGA Claims” means any and all claims that were brought under the Private
19 Attorneys General Act, Labor Code §§ 2698 *et seq.*, on behalf of the Aggrieved Employees contained in
20 the Operative Complaint and any additional wage and hour PAGA claims that could have been brought
21 based on the facts alleged in the Operative Complaint for any and all of those claims during the PAGA
22 Claim Period. The Operative Complaint is attached hereto as **Exhibit 1**. Aggrieved Employees cannot opt
23 out of this waiver of claims.

24 1.32 “Released Parties” means Defendant, as well as Defendant’s officers, shareholders, directors,
25 agents, employees, attorneys, and insurers.

26 1.33 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity that
27 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator agreed
28

1 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
2 each represent that they do not have any financial interest in the Settlement Administrator.

3 1.34 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
4 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
5 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
6 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
7 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
8 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
9 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees
10 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
11 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
12 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
13 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
14 other filings required by any governmental taxing authority or agency; all costs and fees associated with
15 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
16 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
17 in connection with the execution of its duties under this Agreement.

18 **2. DESCRIPTION OF THE LITIGATION**

19 2.1 On or about December 9, 2022, Plaintiff sent notice to the LWDA to exhaust administrative
20 remedies under the PAGA for (1) Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure
21 to Pay Overtime Wage), (2) Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7 § 4 (Failure to
22 Pay Minimum Wages), (3) Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
23 Statements), (4) Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records (5)
24 Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages), (6) Violation of Labor Code §
25 432.6, 432.7, 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver
26 Relating Thereto), and (7) Violation of Labor Code §§ 558, 558.1 (Provision Regarding Hours and Days
27 of Work in Any Industrial Welfare Commission Order). The LWDA did not respond to the notice within
28

1 the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorney
2 General on all alleged PAGA claims.

3 2.2 On or about December 14, 2022, Plaintiff filed a class action Complaint in Stanislaus County
4 Superior Court on behalf of herself and Class Members alleging claims for (1) Failure to Pay Overtime
5 Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Accurate Wage Statements, (4) Failure
6 to Pay Final Wages, (5) Violation of Labor Code Section 432.7, (6) Violation of Labor Code Section 432.6,
7 and (7) Unfair Competition. Plaintiff filed a First Amended Complaint (the “Operative Complaint”
8 attached hereto as **Exhibit 1**) on approximately May 2, 2023 to add a PAGA cause of action based on the
9 violations alleged in the December 9, 2022 notice to the LWDA on behalf of herself and Aggrieved
10 Employees.

11 2.3 Through informal discovery, Defendant and Defendant’s Counsel provided Class Counsel
12 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
13 Class Members including, but not limited to, Class Members’ workweeks, dates of employment, total
14 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports
15 for a randomly selected sample of Class Members.

16 2.4 On January 19, 2024, the Parties participated in a lengthy mediation with private mediator
17 Mark LeHocky, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At
18 all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length.

19 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
20 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
21 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
22 merits of the claims and the defenses to those claims.

23 2.6 In the Action, Plaintiff contends that Defendant violated California law as follows:

24 (1) “Defendants failed to compensate Plaintiff and similarly situated employees for all overtime
25 hours worked at their regular rate of pay due to its rounding practices. *See Camp v. Home Depot*
26 *U.S.A., Inc.*, 84 Cal.App.5th 638 (2022)”;

1 (2) “Plaintiff was not exempt to the State’s Minimum Wage Order. Defendants aware of their
2 obligation to pay the minimum wage for each hour worked but failed to do so due to its rounding
3 practices. *See Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022)”;

4 (3) “Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized
5 statement or failed to provide an accurate and complete itemized statement showing the
6 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
7 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
8 and double time hours worked and corresponding rates of pay, and gross and net wages earned.
9 The paystubs also did not accurately itemize Plaintiff’s and similarly situated employees’ total
10 hours worked due to Defendants’ rounding practice. Also, Plaintiff’s wage statements did not
11 include the inclusive dates of the period for which the employee is paid. Instead, Plaintiff’s wage
12 statements only showed an end date. Plaintiff and similarly situated employees were not able to
13 promptly and easily determine their total hours worked from their paystubs alone. Additionally,
14 Plaintiff and similarly situated employees suffered confusion over whether they received all
15 wages owed and were prevented from effectively challenging information on their wage
16 statements”;

17 (4) “Plaintiff and similarly situated employees did not receive all wages, including minimum and
18 overtime wages, and meal and rest period premiums, at their termination or within the required
19 time after their separation from employment. [] An employer who willfully fails to pay an
20 employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the
21 employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203. []
22 Defendants knew of their obligation to pay Plaintiff’s and similarly situated employees’ their final
23 wages when their employment terminated. Indeed, Defendants knew of and actively enforced its
24 rounding practice despite being able to pay actual hours down to the minute based on time records
25 it kept for employees. Furthermore, Defendant failed to pay Plaintiff all her wages due to
26 COVID-19 leave until approximately twenty days after her employment ended”;

27 (5) “Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors,
28 infractions including but not limited to traffic violations before there was any conditional offer of

1 employment. Defendants’ form of questioning is too broad and is not specific enough to inquire
2 only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to
3 specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to
4 law are not to be disclosed violates the statute given the broadness of the question. Thus, this was
5 in violation of the law”;

6 (6) “Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors,
7 infractions including but not limited to traffic violations before there was any conditional offer of
8 employment. Defendants’ form of questioning is too broad and is not specific enough to inquire
9 only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to
10 specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to
11 law are not to be disclosed violated the law against such disclosures. A further violation occurred
12 when Defendants also required Plaintiff and similarly situated employees to sign waivers as a
13 condition of employment that waiver claims related to Defendants improperly requiring
14 disclosure of criminal history”;

15 (7) “Plaintiff and similarly situated employees were not paid all wages owed, including minimum
16 and overtime wages, during their employment as a result of Defendants’ rounding practices. []
17 Plaintiff further alleges that such actions and/or conduct constitute a violation of the California
18 Unfair Competition Law (“UCL”) (Business and Professions Code 17200 et seq.) pursuant to
19 Cortez v. Purolator Air Filtration Products Co., 23 Cal.4th 163 (2000)”;

20 (8) “Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following
21 provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current
22 and former employees:

- 23 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay
24 Overtime Wages)
- 25 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay
26 Minimum Wages)
- 27 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 28 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 432.6, 432.7, and 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver Relating Thereto)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)”

2.7 Defendant has denied each of Plaintiff’s claims and Defendant has denied that this Action is appropriate for class certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties’ theories of potential exposure for the underlying claims and the class data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendant’s factual and legal contentions and defenses.

2.8 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel, Defendant, and Defendant’s Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant’s Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Effective Date does not occur, or if the Court’s approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall

1 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
2 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
3 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
4 evidence that may be applicable.

5 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
6 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
7 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
8 the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, any and all
9 rights to challenge all such claims and allegations in the Action upon all procedural, legal and factual
10 grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds,
11 as well as to assert any and all other potential defenses or privileges.

12 **4. SCOPE OF THE CLASS**

13 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
14 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
15 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
16 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
17 Section 7.5.1.

18 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
19 this Agreement.

20 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
21 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
22 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
23 data request to the Settlement Administrator. The data request must contain all of the following
24 information: (a) the full name and, if applicable, Social Security Number of the individual making the
25 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
26 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
27 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
28 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the

1 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
2 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
3 review its records.

4 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
5 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
6 person who submitted the data request, at the address designated for that purpose in the data request. All
7 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
8 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
9 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
10 Employee for all other purposes.

11 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
12 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
13 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
14 dispute. Defendant's records shall control unless the individual submitting the data request provides
15 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's
16 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The
17 Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
18 the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7)
19 calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement
20 Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject
21 to Court review.

22 **5. TERMS OF THE SETTLEMENT**

23 The Parties agree as follows:

24 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
25 Section 6, Defendant shall pay the Gross Settlement Amount (\$465,000). Funding of the Gross Settlement
26 Amount shall occur within thirty (30) calendar days after the Effective Date to be held in trust in a QSF by
27 the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
28 Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action

1 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
2 the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement,
3 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to
4 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
5 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement
6 Amount.

7 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
8 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
9 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
10 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
11 exceed \$15,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
12 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
13 exceed the \$15,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099
14 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than
15 the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
16 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
17 a pro rata basis.

18 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
19 Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
20 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
21 Members on a pro rata basis.

22 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an
23 Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
24 (\$10,000) to compensate for the risks, time, and expense of her involvement in the Action and securing the
25 benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual
26 Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member.
27 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
28 long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a

1 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than
2 the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
3 Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class
4 Members on a pro rata basis.

5 5.5 PAGA Payment: Sixty Five Thousand Dollars (\$65,000) of the Gross Settlement Amount
6 shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment
7 will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro
8 rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated
9 PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class
10 Members on a pro rata basis.

11 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
12 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
13 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
14 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
15 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

16 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
17 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
18 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
19 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
20 any new or additional compensation or benefits under any company bonus or other compensation or benefit
21 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
22 Class Member or Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or
23 matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual
24 Settlement Amounts provided for in this Agreement are the sole payments to be made by Defendant to the
25 Participating Class Members and Aggrieved Employees in connection with this Agreement
26 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
27 might have been in effect during the period covered by this Agreement).

1 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
2 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
3 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
4 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
5 Administrator Costs, and the PAGA Payment. The Net Settlement Amount will be allocated among two
6 subclasses, the Employee Subclass and the Applicant Subclass. Class Members shall not be members of
7 both subclasses. To the extent a Class Member was hired and performed any work for Defendant, the Class
8 Member shall be a part of the Employee Subclass. Four percent (4%) of the Net Settlement Amount shall
9 be allocated to the Applicant Subclass and 96% of the Net Settlement Amount shall be allocated to the
10 Employee Subclass. Distribution of the apportioned Net Settlement Amount to Participating Class
11 Members within each subclass shall be as follows: Each Employee Subclass member's share will be
12 determined by dividing their total weeks worked within the Class Period by the total weeks worked by all
13 Employee Subclass members within the Class Period. That fraction will then be multiplied by the portion
14 of the Net Settlement Amount allocated to the Employee Subclass to arrive at the individual's share of the
15 Net Settlement Amount. As the Applicant Subclass will not have any weeks worked based on the nature
16 of the claim, the portion of the Net Settlement Amount allocated to the Applicant Subclass will be divided
17 equally among all individuals within the Applicant Subclass. The allocation of the PAGA Payment
18 between the PAGA Employee Subclass and the PAGA Applicant Subclass will follow a similar allocation.
19 Aggrieved Employees shall not be members of both subclasses. To the extent an Aggrieved Employee
20 was hired and performed any work for Defendant, the individual shall be a part of the PAGA Employee
21 Subclass. The Aggrieved Employee's share of the 25% portion of the PAGA Payment will be divided as
22 follows: 96% for the PAGA Employee Subclass and 4% for the PAGA Applicant Subclass. The PAGA
23 Employee Subclass shares will be determined by dividing those individual's total weeks worked within the
24 PAGA Claim Period by the total weeks worked by all PAGA Employee Subclass members within the
25 PAGA Claim Period. That fraction will then be multiplied by the portion of the PAGA Payment allocated
26 to PAGA Employee Subclass to arrive at that individual's share. As the PAGA Applicant Subclass will not
27 have any weeks worked based on the nature of the claim, the portion of the PAGA Payment allocated to
28 the PAGA Applicant Subclass will be divided equally among all individuals within the PAGA Applicant

Subclass. These payments to Aggrieved Employees shall be allocated as 100% penalties and Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and Aggrieved Employees are as follows:

5.9.1 One Third (1/3) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

5.9.2 Two Thirds (2/3) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Participating Class Members, the

1 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
2 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
3 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
4 implications of any provision of this Agreement.

5 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
6 Agreement are limited to the Gross Settlement Amount and any employer side payroll taxes owed on
7 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
8 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
9 expressly provided otherwise herein. However, in the event this Agreement is deemed null and void as
10 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
11 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
12 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
13 the date of such event.

14 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
15 only, certification of the class as defined in Sections 1.5 and 4.1 is appropriate and the requisites for
16 establishing class certification have been met and are met.

17 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
18 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
19 Aggrieved Employees.

20 **6. RELEASE**

21 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all Participating
22 Class Members will be deemed to fully, finally and forever release the Released Class Claims as to all
23 Released Parties. In addition, on the Effective Date, all Participating Class Members and their successors
24 in interest will be permanently enjoined and forever barred from prosecuting any of the Released Class
25 Claims against any of the Released Parties.

26 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
27 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
28 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in

1 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
2 Claims against any of the Released Parties.

3 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
4 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
5 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
6 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
7 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.

8 **7. SETTLEMENT ADMINISTRATION**

9 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
10 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
11 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
12 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
13 any individual Class Members and Aggrieved Employee whose address or contact information as provided
14 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
15 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
16 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
17 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
18 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
19 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
20 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests
21 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
22 determining and paying the final amounts due to be paid under the Agreement after resolution of all
23 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
24 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
25 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
26 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
27 from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of
28 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of

1 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
2 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
3 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
4 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
5 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
6 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
7 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
8 Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
9 necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to
10 the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if
11 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
12 all payments and obligations contemplated by the Agreement have been fully executed.

13 7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants
14 that, to the best of its knowledge, Class Members and Aggrieved Employees are able to read and write in
15 English such that no translation of the Notice of Settlement into another language is necessary. The Notice
16 of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and
17 conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to
18 dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of
19 Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount,
20 Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement
21 Payments, proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the
22 scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing
23 on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
24 regarding Class Member's and Aggrieved Employee's estimated Individual Settlement Amount. The
25 Notice of Settlement will provide information on how to access electronic copies online of the Notice of
26 Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and
27 costs, and any other documents as the Court directs.

1 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
2 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the first and last
3 name, last known mailing address, last known telephone number, Social Security Number, start and end
4 date (if any) of employment of each Class Member and Aggrieved Employee, the Qualifying Workweeks
5 for the class payment from the Net Settlement Amount, the Qualifying Workweeks for the PAGA Payment,
6 and any other information the Settlement Administrator needs to effectuate notice to Class Members and
7 Aggrieved Employees as outlined herein, including the assigned subclass for the Class Member. No later
8 than fourteen (14) calendar days after receipt of such address information, the Settlement Administrator
9 will perform a national change of address (“NCOA”) search, update the addresses per the results of the
10 NCOA search, and then mail the Notice of Settlement, substantially in the form attached as **Exhibit 2**, to
11 each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Settlement
12 Administrator shall maintain all information received from Defendant as CONFIDENTIAL to itself, and
13 Defendant’s Counsel. However, Class Counsel shall be able to review the breakdown of Qualified
14 Workweeks and estimated Individual Settlement Amounts for Class Members and Aggrieved Employees
15 prior to mailing for quality assurance provided the personal identifying information is redacted and/or
16 omitted.

17 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
18 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
19 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
20 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
21 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
22 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
23 five (5) calendar days to any more recent address found as a result of the search. Following each search
24 that does not result in a corrected address, for those Class Members who appear to be current employees
25 of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
26 Defendant’s Counsel for assistance and Defendant shall cooperate in good faith with the Settlement
27 Administrator’s reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
28 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address

1 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
2 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
3 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
4 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
5 be bound by all terms of the Agreement, including the releases contained in Section 6.

6 7.5 Responses to Notice of Settlement:

7 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
8 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
9 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
10 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
11 excluded from the settlement; (c) identify the case name and number (*i.e. Brown v. C.W. Brower, Inc.*, Case
12 No. CV-22-005735); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period
13 or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-
14 out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark
15 on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-
16 out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be
17 entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or
18 comment thereon. The name of any Class Member who submits a valid and timely opt out request will be
19 specifically identified in any proposed order granting final approval. Class Members who fail to submit a
20 valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final
21 judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member, they
22 will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
23 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

24 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
25 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
26 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
27 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
28 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's

1 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
 2 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
 3 number (*i.e. Brown v. C.W. Brower, Inc.*, Case No. CV-22-005735); (e) be signed; and (f) be post-marked
 4 no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The
 5 Notice of Settlement will inform the Class Member that they should also file a notice of intent to appear
 6 with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at
 7 the final approval hearing.

8 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
 9 Workweeks or their assigned Subclass on the Notice of Settlement shall contact the Settlement
 10 Administrator. The dispute must (a) identify the nature of the dispute; (b) provide any information or
 11 documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion
 12 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Settlement Administrator shall
 13 promptly (in no event more than two business days) forward all such disputes to Defendant's Counsel and
 14 request that Defendant review the dispute. Defendant's records shall presumptively control unless the
 15 Class Member can produce documentation evidencing other periods of employment worked. If Defendant
 16 agrees with submitted information, the Class Member shall be reassigned to a new subclass and/or credited
 17 or subtracted Qualifying Workweeks in accordance with their submitted dispute and that final number of
 18 Qualified Workweeks shall govern the calculation of that Class Member's Individual Settlement Amount.
 19 If Defendant disagrees with the submitted information, Defendant's Counsel will promptly advise Class
 20 Counsel of the dispute, which includes turning over any documentation submitted by the Class Member as
 21 part of the dispute. Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such
 22 dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that
 23 Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement
 24 Administrator, subject to Court review.

25 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
 26 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
 27 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
 28 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure

1 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
2 letter, whichever is later.

3 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
4 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
5 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
6 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
8 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
9 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
10 and detailed report regarding the statistics and responses of settlement administration to date and all the
11 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

12 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
13 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
14 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
15 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
16 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
17 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
18 calculations to Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement
19 Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
20 Administrator within thirty (30) calendar days after the Effective Date to be to be held in trust in a QSF.
21 Within seven (7) calendar days after Defendant funds the settlement, the Settlement Administrator shall
22 deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
23 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
24 and payment to Participating Class Members and/or Aggrieved Employees as required under this
25 Agreement and approved by Court.

26 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
27 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
28

the Settlement Administrator with the pertinent taxpayer identification number and payment instructions after the Final Approval Date.

7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved Enhancement Payment to the Class Representative, care of Class Counsel unless another method is requested by Class Counsel.

7.8.3 Only Participating Class Members and Aggrieved Employees will receive their Individual Settlement Amount.

7.8.4 The Settlement Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Settlement Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The

schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date

1 2 3 4 5	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
6 7 8	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
9 10 11	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
12 13 14	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response

1 time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this
2 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
3 Settlement.

4 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
5 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
6 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
7 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
8 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
9 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
10 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
11 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
12 approved as fair, reasonable and adequate as to the Class Members.

13 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
14 Agreement.

15 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
16 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
17 appropriate to assure effective communication to individual Class Members of information about their
18 rights and obligations under this Agreement.

19 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
20 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
21 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
22 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
23 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
24 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
25 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
26 request to opt out during the Notice Period.

27 9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable
28 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The

1 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
2 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
3 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
4 Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award
5 of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
6 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
7 enforcement of the terms of the Agreement and the Court's orders.

8 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
9 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
10 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgment
11 be filed, all Parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
12 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
13 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
14 of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
15 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
16 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
17 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

18 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
19 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
20 PAGA Settlement and Final Judgment.

21 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
22 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

23 **10. MISCELLANEOUS TERMS**

24 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
25 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
26 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
27 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
28 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the

total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there are no more than 33,404 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 36,745 (i.e., greater than 10% more than 33,404), then either, at the option of Defendant, (1) the Gross Settlement Amount will increase by a pro-rata dollar value equal to the number of workweeks in excess of 36,745 workweeks (the 10% escalation limit) or (2) the Class Period End Date will be the date immediately prior to the date that the actual number of workweeks exceeds 33,404 by 10% (i.e., the number of workweeks first equals 36,745). In the event Defendant elects the former, for example, if the actual number of workweeks is determined to be 12% higher than 33,404 (i.e., the number of workweeks increases to 37,412), the Gross Settlement Amount shall be increased by 2%. To the extent the Class Period is shortened under this provision, the PAGA Claim Period shall be similarly shortened to the same end date.

10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO

1 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
2 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
3 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
4 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
5 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
6 THIS AGREEMENT.

7 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
8 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
9 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
10 and discharged in this Agreement.

11 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
12 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
13 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
14 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

15 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth
16 in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
17 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

18 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
19 be entered according to this Agreement. The Parties stipulate and agree that the Stanislaus County Superior
20 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
21 Code section 664.6 and that the prevailing party in any action necessary to enforce the terms of the
22 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

23 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
24 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
25 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
26 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
27 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
28 otherwise, to effectuate this Agreement and the terms set forth herein.

1 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of the
 2 terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be,
 3 construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
 4 Operative Complaint, the representative character of the Action, the validity of any of the claims that were
 5 or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
 6 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
 7 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or
 8 any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing
 9 toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this
 10 Stipulation with the intention to avoid further disputes and litigation.

11 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
 12 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
 13 third business day after mailing by United States certified mail, return receipt requested, addressed as
 14 follows:

15 To Plaintiff and the Class Counsel:

16 Galen T. Shimoda
 17 Justin P. Rodriguez
 18 Renald Konini
 19 Shimoda & Rodriguez Law, PC
 20 9401 East Stockton Blvd., Suite 120
 21 Elk Grove, CA 95624

22 To Defendant:

23 Julie A. Marquis
 24 Dane M. Willis
 25 Freeman Mathis & Gary, LLP
 26 1010 B Street, Suite 400
 27 San Rafael, California 94901

28 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
 party or its counsel participated in the drafting of this Agreement.

1 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting
2 for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any
3 amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as
4 expressly provided in this Agreement.

5 10.12 No Modifications: This Agreement may be amended or modified only by a written
6 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
7 discharged except by performance in accordance with its terms.

8 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
10 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
11 to effectuate its terms and to execute any other documents required to effectuate the terms of this
12 Agreement.

13 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
14 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
15 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
16 may be executed on behalf of all Class Members by the Class Representative.

17 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
18 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
19 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
20 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
21 and effect of originals.

22 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
23 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
24 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
25 and governed by, the substantive laws of the State of California without giving effect to that State's choice
26 of law principles.

1 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. This is a material term of the Agreement and non-breaching
8 Parties will seek court intervention if this provision is breached.

9 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
12 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
13 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
14 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

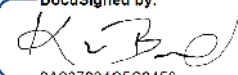
17 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement
21 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
22 a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
24 attorneys, as of the day and year herein set forth.

25 **For Plaintiff:**

26 Date: 4/2/2024

DocuSigned by:

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1 **FOR Defendant:**

2 Date: _____

3 By: _____

4 For C.W. Brower, Inc.

5
6 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

7
8 Dated: April 5, 2024

9 By: _____

10 Galen T. Shimoda, Justin P. Rodriguez and
11 Renald Konini
12 Attorneys for Plaintiff, the Class Members
13 and Aggrieved Employees

14 APPROVED AS TO FORM

FREEMAN MATHIS & GARY, LLP

15 Dated: _____

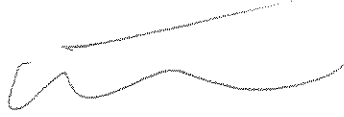
16 By: _____

17 Julie A. Marquis
18 Dane M. Willis
19 Attorneys for Defendant
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FOR Defendant:

Date: 3-29-24


By: _____
For C.W. Brower, Inc.

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____
Galen T. Shimoda, Justin P. Rodriguez and
Renald Konini
Attorneys for Plaintiff, the Class Members
and Aggrieved Employees

APPROVED AS TO FORM

FREEMAN MATHIS & GARY, LLP

Dated: April 10, 2024


By: _____
Julie A. Marquis
Dane M. Willis
Attorneys for Defendant

EXHIBIT 1

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Electronically Filed
5/2/2023 11:32 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Raquel Enriquez, Deputy

Attorneys for Plaintiff KARINA BROWN,
individually and on behalf of all other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C. W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for all purposes to Hon. John D.
Freeland
Department: 23*

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Wage Statement Violations**
- 4. Waiting Time Penalties**
- 5. Violation of Labor Code Section 432.7**
- 6. Violation of Labor Code Section 432.6**
- 7. Unfair Competition**
- 8. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff KARINA BROWN (“Plaintiff”), on behalf of herself and all other similarly situated
2 employees, hereby files this First Amended Complaint against Defendants C. W. BROWER, INC., a
3 California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 “Defendants”). On information and belief, Plaintiff allege the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
7 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, failure to pay all final
8 wages owed, failure to provide accurate itemized wage statements, unlawfully requiring the disclosure
9 of criminal history waiving rights protecting against improperly requiring disclosure of criminal history,
10 and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Stanislaus County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 7.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendants reside in Stanislaus County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Stanislaus County, and Defendants’ obligation to pay wages arose in
18 Stanislaus County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
22 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
23 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
24 (“LWDA”) on approximately December 9, 2022. Plaintiff provided facts and legal bases for his claims
25 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
26 of action. Plaintiff also submitted the \$75.00 filing fee. The December 9, 2022, notice was also sent via
27 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
28 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies

pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the following: all hourly non-exempt employees who have or continue to work for Defendants in California from December 9, 2021 to present. For violation of labor code sections 432.6, 432.7, and 432.8, Aggrieved Employees include, but is not limited to the following: all individuals who applied to work for Defendants in California, regardless of whether or not they were ultimately hired from December 9, 2021, to present.

PARTIES

5. KARINA BROWN is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, C. W. BROWER, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

12. Plaintiff brings the First through Seventh Causes of Action on behalf of herself, and all others similarly situated, as a class action pursuant to California Code of Civil Procedure section 382. The classes which Plaintiff seeks to represent is composed of, and defined, as follows:

First through Fourth and Seventh Causes of Action: All hourly non-exempt employees who have or continue to work for C.W. BROWER, INC. in California from December 14, 2018, to the present.

Fifth and Sixth Causes of Actions: All individuals who applied to work for C.W. BROWER, INC. in California, regardless of whether or not they were ultimately hire from December 14, 2019, to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as 100 individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

(1) Whether Defendants had rounded employees' hours worked despite being able to and actually recording actual hours worked down to the minute;

- (2) Whether Defendants violated the law by only paying employees for their rounded hours rather than all actual hours worked, including minimum wages and overtime;
 - (3) Whether Defendants paid the putative class members for all hours worked;
 - (4) Whether Defendants maintained accurate payroll records;
 - (5) Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members were not paid all minimum and overtime wages owed;
 - (6) Whether, as a result of Defendants' policies and practices, Plaintiffs and putative class members received all wages, due and owing, at the time of their termination or separation;
 - (7) Whether Defendants' new hire applications and hiring documents violated the Labor Code's prohibitions on requiring disclosure of criminal history and waiving protections against such disclosures; and
 - (8) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.
- (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were not paid minimum and overtime wages as a result of Defendants' rounding practices. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226 and failed to pay these wages at termination. Furthermore, the application materials and process was the same for all individuals seeking employment and all improperly required disclosure of criminal history before any conditional offers of employment and sought waivers of rights protecting against those practices. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

1 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
2 putative class. For all relevant times, Plaintiff resided in California and worked for
3 Defendants in California. Moreover, Plaintiff is an adequate representative of the
4 putative class as Plaintiff has no interests that are adverse to those of putative class
5 members. Additionally, Plaintiff has retained counsel who has substantial experience in
6 complex civil litigation and wage and hour matters.

7 (e) Superiority: A class action is superior to other available means for the fair and efficient
8 adjudication of the controversy since individual joinder of all members of the putative
9 class is impracticable. Class action treatment will permit a larger number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously,
11 efficiently, and without the unnecessary duplication of effort and expense that numerous
12 individual actions would engender. Further, as damages suffered by each individual
13 member of the class may be relatively small, the expenses and burden of the individual
14 litigation would make it difficult or impossible for individual members of the class to
15 redress the wrongs done to them, and an important public interest will be served by
16 addressing the matter as a class action. The cost to the court system of adjudication of
17 such individualized litigation would be substantial. Individualized litigation would also
18 present the potential for inconsistent or contradictory judgments.

19 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 GENERAL ALLEGATIONS

22 15. Plaintiff incorporate(s) by reference and re-allege(s) paragraphs 1 through 15 as though
23 fully set forth herein.

24 16. Plaintiff worked for Defendants from August 8, 2022, to September 9, 2022. Her hourly
25 rate was \$16.00 per hour. Prior to receiving a conditional offer of employment, Defendants required
26 Plaintiff and similarly situated employees to fill out and disclose, both directly and indirectly,
27 information regarding gang related activity, an individual's ability to be bonded, arrests, and conviction
28 history. Defendants sought new applicants and brought them in for interviews in groups, having

1 Plaintiff and similarly situated employees fill out documents that required disclosing gang related
2 activity, arrests, and conviction history. The inquiry further required Plaintiff to specify and explain any
3 convictions. The inquiry did not specify a date range that the convictions must have occurred and did
4 not specify what she did not need to include in her answer. Despite some of these documents stating
5 that a conditional offer of employment had been made, this was untrue as these documents were filled
6 out in Defendants lobby before the initial interview had even been completed. For example, Defendants
7 discussed the information contained in Plaintiff's disclosure during her first meeting and interview
8 before there was any conditional offer of employment made. Defendants also required Plaintiff and
9 similarly situated employees to sign a document waiving claims relating to Defendants securing and
10 investigating the information disclosed.

11 17. Plaintiff was employed by Defendants from August 8, 2022, to September 9, 2022. Her
12 hourly rate was \$16.00 per hour. Plaintiff's work schedule was 8:00 a.m. to 4:00 p.m. five (5) days a
13 week. Defendants had the ability to, and did, track Plaintiff and similarly situated employee's hours
14 worked down to the minute. Plaintiff and similarly situated employees clocked in and out by swiping
15 cards through a machine that logged the exact clock in/out time. Despite being able to pay the actual
16 hours worked based on readily available time records, Defendants rounded Plaintiff's and similarly
17 situated employee's hours worked and failed to pay them all minimum wages and overtime wages owed
18 for those times in which the actual hours worked was rounded down. For example, Plaintiff was not
19 paid approximately \$3.86 in unpaid overtime wages during her employment. Defendants do not have a
20 rounding policy and failed to inform Plaintiff and similarly situated employees of the rounding practices.
21 This resulted in unpaid overtime and minimum wages.

22 18. On September 23, 2022, Plaintiff emailed Defendants requesting her final check be
23 mailed to her. However, Defendants responded to Plaintiff via email requesting that she leave a
24 voicemail confirming that Defendants could mail the check and include her current mailing address,
25 despite having an email request. On September 23, 2022, Plaintiff left a voicemail for Defendants once
26 again requesting to have her check mailed to her. Defendants responded that the check would go out
27 with that day's mail. This check did not include payment for the unpaid overtime and minimum wages
28 that were lost due to rounding. On August 25, 2022, Plaintiff tested positive for COVID-19 and

1 immediately informed Defendants. Plaintiff completed a California COVID-10 Leave Application for
2 the company. Plaintiff returned to work on September 6, 2022. Plaintiff's pay for the leave due to
3 COVID-19 was forty (\$40) dollars less than what we was required to be paid. Defendants did not
4 correct this until September 28, 2022, when they sent her a letter in the mail with her check enclosed.

5 19. Defendants maintained a policy where similarly situated employees working at
6 Defendants' convenience stores were required to forfeit tips left by customers. Defendants' written
7 policy required similarly situated employees to put this money into the register, which Defendants then
8 took as part of their general revenues.

9 20. Defendants maintained a policy that paid \$500.00 to each similarly situated employee
10 that successfully passed a police decoy alcohol sting. The policy set forth specific steps that an
11 employee must perform in order to be eligible for the \$500.00 bonus. When paying these bonuses,
12 Plaintiff is informed and believes that Defendants did not incorporate the value of this payment into
13 similarly situated employees regular rate of pay for overtime purposes.

14 21. Plaintiff's wage statements did not include the inclusive dates of the period for which the
15 employee is paid. Instead, Plaintiff's wage statements only showed an end date. Plaintiff could not
16 properly confirm the accuracy of her wage statement without knowing the exact range of the statement.
17 Additionally, as a result of Defendants' failure to pay Plaintiff and similarly situated employees all
18 minimum wages and overtime wages owed, the wage statements Defendants issued were inaccurate.
19 The paystubs that Defendants issued did not itemize accurate regular and overtime hours worked,
20 premiums owed, and accurate gross and net wages earned. Consequently, Plaintiff and similarly
21 situated employees were not able to determine the total wages owed to them from their paystubs alone.

22 22. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated
23 employees all minimum wages and overtime wages owed.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**
26 **FAILURE TO PAY OVERTIME WAGES**
(As to all Defendants)

27 23. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 22 as though fully
28 set forth herein.

1 24. During the period Plaintiff was employed by Defendants, Defendants were required to
2 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
3 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
4 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 7, section (3)(A);*
5 Cal. Lab. Code §§ 510, 1194.

6 25. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
7 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
8 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
9 worked at their regular rate of pay due to its rounding practices. *See Camp v. Home Depot U.S.A., Inc.,*
10 84 Cal.App.5th 638 (2022).

11 26. Plaintiff and similarly situated employees were not exempt from overtime protections
12 employees under the California Wage Orders and Labor Code.

13 27. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
14 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
15 the extent pertinent as if set forth here in full.

16 **SECOND CAUSE OF ACTION**
17 **FAILURE TO PAY MINIMUM WAGES**
 (As to all Defendants)

18 28. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 27 as though fully
19 set forth herein.

20 29. For the period preceding the filing of this Complaint, Defendants were required to
21 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
22 every hour worked. *See MW-Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code §*
23 1194.

24 30. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
25 obligation to pay the minimum wage for each hour worked but failed to do so due to its rounding
26 practices. *See Camp v. Home Depot U.S.A., Inc., 84 Cal.App.5th 638 (2022).*

31. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully set forth herein.

33. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

34. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' rounding practice. Also, Plaintiff's wage statements did not include the inclusive

1 dates of the period for which the employee is paid. Instead, Plaintiff's wage statements only showed an
2 end date. Plaintiff and similarly situated employees were not able to promptly and easily determine their
3 total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees
4 suffered confusion over whether they received all wages owed and were prevented from effectively
5 challenging information on their wage statements.

6 35. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **FOURTH CAUSE OF ACTION**
10 **WAITING TIME PENALTIES**
11 **(As to all Defendants)**

12 36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully
13 set forth herein.

14 37. An employer must pay an employee who is terminated all unpaid wages immediately
15 upon termination. See Cal. Lab. Code § 201.

16 38. An employer must pay an employee who resigns all unpaid wages within seventy-two
17 (72) hours of their resignation. See Cal. Lab. Code § 202.

18 39. Plaintiff and similarly situated employees did not receive all wages, including minimum
19 and overtime wages, and meal and rest period premiums, at their termination or within the required time
20 after their separation from employment.

21 40. An employer who willfully fails to pay an employee wages in accordance with California
22 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
23 days. See Cal. Lab. Code § 203.

24 41. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
25 their final wages when their employment terminated. Indeed, Defendants knew of and actively enforced
26 its rounding practice despite being able to pay actual hours down to the minute based on time records it
27 kept for employees. Furthermore, Defendant failed to pay Plaintiff all her wages due to COVID-19
28 leave until approximately twenty days after her employment ended.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 432.7
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. California Labor Code section 432.7(a)(1) makes it unlawful for an employer to ask an applicant to disclose information "concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 of the Penal Code."

45. California Labor Code section 432.7(c) provides that:

If a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

46. Defendants inquired about Plaintiff's criminal history including felonies, misdemeanors, infractions including but not limited to traffic violations before there was any conditional offer of employment. Defendants' form of questioning is too broad and is not specific enough to inquire only about Plaintiff's relevant conviction history. Defendants' failure to narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to law are not to be disclosed violates the statute given the broadness of the question. Thus, this was in violation of the law.

47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 432.6
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. California Labor Code section 432.6 provides that “[a] person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.”

50. The prohibition against waivers found in California Labor Code section 432.6 includes those found in California Government Code section 12952, which prohibits inquiry into any information related to an individual’s criminal history directly in an application or through other means directed at discovering criminal history. See Cal. Code Regs., tit. 2, § 11017.1(4).

51. Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors, infractions including but not limited to traffic violations before there was any conditional offer of employment. Defendants’ form of questioning is too broad and is not specific enough to inquire only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to law are not to be disclosed violated the law against such disclosures. A further violation occurred when Defendants also required Plaintiff and similarly situated employees to sign waivers as a condition of employment that waiver claims related to Defendants improperly requiring disclosure of criminal history.

52. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth here in full.

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

53. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as though fully set forth herein.

54. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

55. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, during their employment as a result of Defendants' rounding practices.

56. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163 (2000).

57. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 510 and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully set forth herein.

59. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 432.6, 432.7, and 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver Relating Thereto)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

60. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

61. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

d. Liquidated damages pursuant to California Labor Code section 1194.2;

4. As to the Third Cause of Action:

a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

5. As to the Fourth Cause of Action:

a. For statutory penalties equal to Plaintiff and similarly situated employees daily rate of pay multiplied by thirty (30) days;

6. As to the Fifth Cause of Action:

a. For any non-intentional violation, actual damages or two hundred dollars (\$200), whichever is greater;

b. For any intentional violation, treble actual damages, or five hundred dollars (\$500), whichever is greater,

c. Reasonable attorney's fees and costs;

7. As to the Sixth Cause of Action:

a. Actual damages as proven at trial;

b. declaratory relief;

c. reasonable attorney's fees and costs;

8. As to the Seventh Cause of Action:

a. Unpaid wages as proven at trial;

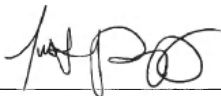
9. As to the Eighth Cause of Action:

- a. For civil penalties as provided in the Labor Code for each enumerated violation;
 - b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
 - c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
 - d. For any other remedies as allowed by law and/or deemed appropriate by the Court;
10. For such other and further relief as this Court may deem just and proper, including, but not limited to:
- a. Wages as proved at trial;
 - b. Injunctive and Declaratory relief;
 - c. Attorney's fees and costs as provided for by law; and
 - d. Interest.

Dated: April 24, 2023

Shimoda & Rodriguez Law, PC

By: _____


Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

Brown v C.W. Brower, Inc.

Stanislaus County Superior Court of California CV-22-005735

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On May 2, 2023, I served the following documents on the party below:

- FIRST AMENDED COMPLAINT FOR DAMAGES

FREEMAN MATHIS & GARY, LLP Julia A. Marquis (SBN 178466) Liam Gaarder-Feingold (SBN 345747) Dane M. Willis (SBN 327901) 1010 B Street, Suite 400 San Rafael, CA 94901 Phone: 415-394-9500 Facsimile: 833-317-0293 E-mail: jmarquis@fmglaw.com dane.willis@fmglaw.com Liam.Gaarder-Feingold@fmglaw.com Joseph.Artieres@fmglaw.com spinkham@fmglaw.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on May 2, 2023, at Elk
3 Grove, California.

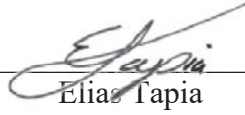
4 
Elias Tapia

EXHIBIT 2

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. CV-22-005735

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: (1) All hourly non-exempt employees who have or continue to work for Defendant in California from December 14, 2018, to [REDACTED] ("Employee Subclass"); and (2) All individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 14, 2019, to [REDACTED] ("Applicant Subclass").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Stanislaus County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Karina Brown ("Plaintiff" or "Class Representative"), and Defendant C.W. Brower, Inc. ("Defendant") on behalf of Class Members, which includes both the Employee Subclass and the Applicant Subclass as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below) and are part of the [Employee/Applicant] Subclass, which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On December 14, 2022, Plaintiff filed a Complaint against Defendant in the Stanislaus County Superior Court of California on behalf of herself and Class Members. The term "Action" means this putative class action pending in Stanislaus County Superior Court, Case No. CV-22-005735. The for the Employee Subclass, Class Period means December 14, 2018, to [REDACTED]. For the Applicant Subclass, Class Period means December 14, 2019, to [REDACTED].

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff asserted the following Causes of Action against Defendant: (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Wage Statement Violations, (4) Waiting Time Penalties, (5) Violation of Labor Code Section 432.7, (6) Violation of Labo Code section 432.6, (7) Unfair Competition, (8) Private Attorneys General Act. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all

allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all individuals within the Employee Subclass or Applicant Subclass as defined above. The Agreement also applies to Aggrieved Employees, which includes all hourly non-exempt employees who have or continue to work for Defendant in California from December 9, 2021, to [REDACTED] ("PAGA Employee Subclass") and all individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 9, 2021, to [REDACTED] ("PAGA Applicant Subclass"). If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Sixty-Five Thousand Dollars (\$465,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$10,000, an Enhancement Payment to the Class Representative of \$10,000, and \$65,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. Of the \$65,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees. As explained further below, the amount of each Class Member's share of the Net Settlement Amount and each Aggrieved Employee's share of the PAGA Payment will depend on the number of weeks worked by Participating Class Members during the Class Period and their assigned subclass.

The number of weeks you worked during the Class Period, your assigned subclass, and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (i.e., those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, assigned subclasses, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees of their Individual Settlement Amount will **not** require the submission of a claim form. The Net Settlement Amount will be allocated among two subclasses, the Employee Subclass and the Applicant Subclass. Class Members shall not be members of both subclasses. To the extent a Class Member was hired and performed any work for Defendant, the Class Member shall be a part of the Employee Subclass. Four percent (4%) of the Net Settlement Amount shall be allocated to the Applicant Subclass and 96% of the Net Settlement Amount shall be allocated to the Employee Subclass. Distribution of the apportioned Net Settlement Amount to Participating Class Members within each subclass shall be as follows: Each Employee Subclass member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Employee Subclass members within the Class Period. That fraction will then be multiplied by the portion of the Net Settlement Amount allocated to the Employee Subclass to arrive at the individual's share of the Net Settlement Amount. As the Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of the Net Settlement Amount allocated to the Applicant Subclass will be divided equally among all individuals within the Applicant Subclass.

The allocation of the PAGA Payment between the PAGA Employee Subclass and the PAGA Applicant Subclass will follow a similar allocation. Aggrieved Employees shall not be members of both subclasses. To the extent an Aggrieved Employee was hired and performed any work for Defendant, the individual shall be a part of the PAGA Employee Subclass. The Aggrieved Employee's share of the 25% portion of the PAGA Payment will be divided as follows: 96% for the PAGA Employee Subclass and 4% for the PAGA Applicant Subclass. The PAGA Employee Subclass shares will be determined by dividing those individual's total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Employee Subclass members within the PAGA Claim Period. That fraction will then be multiplied by the portion of the PAGA Payment allocated to PAGA Employee Subclass to arrive at that individual's share. As the PAGA Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of the PAGA Payment allocated to the PAGA Applicant Subclass will be divided equally among all individuals within the PAGA Applicant Subclass. These payments to Aggrieved Employees shall be allocated as 100% penalties and Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period and are part of the [PAGA Employee/PAGA Applicant] Subclass, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek & Subclass Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be postmarked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class Members who do not opt out will be deemed to have released . . . [1.30].

Aggrieved Employees will be deemed to have released . . . [1.31].

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek and assigned subclass information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation or subclass assignment, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement

Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Brown v. C.W. Brower, Inc.*, CV-22-005735); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e. *Brown v. C.W. Brower, Inc.*, CV-22-005735); (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

In addition to submitting a written objection, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of entry of judgment will be filed with the Court and available online at <https://stanportal.stanct.org/search>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ___, [address] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://stanportal.stanct.org/search>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez

Julie A. Marquis
Dane M. Willis

Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Freeman Mathis & Gary, LLP
1010 B Street, Suite 400
San Rafael, California 94901
Phone: 415-394-9500
Facsimile: 833-317-0293
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit B

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
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Elk Grove, CA 95624
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Facsimile: (916) 760-3733

Electronically Filed
5/2/2023 11:32 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Raquel Enriquez, Deputy

Attorneys for Plaintiff KARINA BROWN,
individually and on behalf of all other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C. W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for all purposes to Hon. John D.
Freeland
Department: 23*

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Wage Statement Violations**
- 4. Waiting Time Penalties**
- 5. Violation of Labor Code Section 432.7**
- 6. Violation of Labor Code Section 432.6**
- 7. Unfair Competition**
- 8. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff KARINA BROWN (“Plaintiff”), on behalf of herself and all other similarly situated
2 employees, hereby files this First Amended Complaint against Defendants C. W. BROWER, INC., a
3 California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 “Defendants”). On information and belief, Plaintiff allege the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
7 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, failure to pay all final
8 wages owed, failure to provide accurate itemized wage statements, unlawfully requiring the disclosure
9 of criminal history waiving rights protecting against improperly requiring disclosure of criminal history,
10 and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Stanislaus County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 7.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendants reside in Stanislaus County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Stanislaus County, and Defendants’ obligation to pay wages arose in
18 Stanislaus County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
22 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
23 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
24 (“LWDA”) on approximately December 9, 2022. Plaintiff provided facts and legal bases for his claims
25 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
26 of action. Plaintiff also submitted the \$75.00 filing fee. The December 9, 2022, notice was also sent via
27 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
28 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies

pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the following: all hourly non-exempt employees who have or continue to work for Defendants in California from December 9, 2021 to present. For violation of labor code sections 432.6, 432.7, and 432.8, Aggrieved Employees include, but is not limited to the following: all individuals who applied to work for Defendants in California, regardless of whether or not they were ultimately hired from December 9, 2021, to present.

PARTIES

5. KARINA BROWN is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, C. W. BROWER, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

12. Plaintiff brings the First through Seventh Causes of Action on behalf of herself, and all others similarly situated, as a class action pursuant to California Code of Civil Procedure section 382. The classes which Plaintiff seeks to represent is composed of, and defined, as follows:

First through Fourth and Seventh Causes of Action: All hourly non-exempt employees who have or continue to work for C.W. BROWER, INC. in California from December 14, 2018, to the present.

Fifth and Sixth Causes of Actions: All individuals who applied to work for C.W. BROWER, INC. in California, regardless of whether or not they were ultimately hire from December 14, 2019, to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as 100 individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

(1) Whether Defendants had rounded employees' hours worked despite being able to and actually recording actual hours worked down to the minute;

- 1 (2) Whether Defendants violated the law by only paying employees for their rounded
2 hours rather than all actual hours worked, including minimum wages and
3 overtime;
- 4 (3) Whether Defendants paid the putative class members for all hours worked;
- 5 (4) Whether Defendants maintained accurate payroll records;
- 6 (5) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
7 class members were not paid all minimum and overtime wages owed;
- 8 (6) Whether, as a result of Defendants' policies and practices, Plaintiffs and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation;
- 11 (7) Whether Defendants' new hire applications and hiring documents violated the
12 Labor Code's prohibitions on requiring disclosure of criminal history and waiving
13 protections against such disclosures; and
- 14 (8) Whether Defendants provided Plaintiff's and putative class members with wage
15 statements that complied with Labor Code section 226.
- 16 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiff and all
19 members of the putative class were non-exempt employees who were not paid minimum
20 and overtime wages as a result of Defendants' rounding practices. Additionally,
21 Defendants issued Plaintiff and all members of the putative class wage statements that
22 did not comply with Labor Code section 226 and failed to pay these wages at termination.
23 Furthermore, the application materials and process was the same for all individuals
24 seeking employment and all improperly required disclosure of criminal history before
25 any conditional offers of employment and sought waivers of rights protecting against
26 those practices. As a result, Plaintiff and each member of the putative class will have
27 suffered the same type of harm and seek the same type of recovery based on the same
28 legal theories.

1 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
2 putative class. For all relevant times, Plaintiff resided in California and worked for
3 Defendants in California. Moreover, Plaintiff is an adequate representative of the
4 putative class as Plaintiff has no interests that are adverse to those of putative class
5 members. Additionally, Plaintiff has retained counsel who has substantial experience in
6 complex civil litigation and wage and hour matters.

7 (e) Superiority: A class action is superior to other available means for the fair and efficient
8 adjudication of the controversy since individual joinder of all members of the putative
9 class is impracticable. Class action treatment will permit a larger number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously,
11 efficiently, and without the unnecessary duplication of effort and expense that numerous
12 individual actions would engender. Further, as damages suffered by each individual
13 member of the class may be relatively small, the expenses and burden of the individual
14 litigation would make it difficult or impossible for individual members of the class to
15 redress the wrongs done to them, and an important public interest will be served by
16 addressing the matter as a class action. The cost to the court system of adjudication of
17 such individualized litigation would be substantial. Individualized litigation would also
18 present the potential for inconsistent or contradictory judgments.

19 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 **GENERAL ALLEGATIONS**

22 15. Plaintiff incorporate(s) by reference and re-allege(s) paragraphs 1 through 15 as though
23 fully set forth herein.

24 16. Plaintiff worked for Defendants from August 8, 2022, to September 9, 2022. Her hourly
25 rate was \$16.00 per hour. Prior to receiving a conditional offer of employment, Defendants required
26 Plaintiff and similarly situated employees to fill out and disclose, both directly and indirectly,
27 information regarding gang related activity, an individual's ability to be bonded, arrests, and conviction
28 history. Defendants sought new applicants and brought them in for interviews in groups, having

1 Plaintiff and similarly situated employees fill out documents that required disclosing gang related
2 activity, arrests, and conviction history. The inquiry further required Plaintiff to specify and explain any
3 convictions. The inquiry did not specify a date range that the convictions must have occurred and did
4 not specify what she did not need to include in her answer. Despite some of these documents stating
5 that a conditional offer of employment had been made, this was untrue as these documents were filled
6 out in Defendants lobby before the initial interview had even been completed. For example, Defendants
7 discussed the information contained in Plaintiff's disclosure during her first meeting and interview
8 before there was any conditional offer of employment made. Defendants also required Plaintiff and
9 similarly situated employees to sign a document waiving claims relating to Defendants securing and
10 investigating the information disclosed.

11 17. Plaintiff was employed by Defendants from August 8, 2022, to September 9, 2022. Her
12 hourly rate was \$16.00 per hour. Plaintiff's work schedule was 8:00 a.m. to 4:00 p.m. five (5) days a
13 week. Defendants had the ability to, and did, track Plaintiff and similarly situated employee's hours
14 worked down to the minute. Plaintiff and similarly situated employees clocked in and out by swiping
15 cards through a machine that logged the exact clock in/out time. Despite being able to pay the actual
16 hours worked based on readily available time records, Defendants rounded Plaintiff's and similarly
17 situated employee's hours worked and failed to pay them all minimum wages and overtime wages owed
18 for those times in which the actual hours worked was rounded down. For example, Plaintiff was not
19 paid approximately \$3.86 in unpaid overtime wages during her employment. Defendants do not have a
20 rounding policy and failed to inform Plaintiff and similarly situated employees of the rounding practices.
21 This resulted in unpaid overtime and minimum wages.

22 18. On September 23, 2022, Plaintiff emailed Defendants requesting her final check be
23 mailed to her. However, Defendants responded to Plaintiff via email requesting that she leave a
24 voicemail confirming that Defendants could mail the check and include her current mailing address,
25 despite having an email request. On September 23, 2022, Plaintiff left a voicemail for Defendants once
26 again requesting to have her check mailed to her. Defendants responded that the check would go out
27 with that day's mail. This check did not include payment for the unpaid overtime and minimum wages
28 that were lost due to rounding. On August 25, 2022, Plaintiff tested positive for COVID-19 and

1 immediately informed Defendants. Plaintiff completed a California COVID-10 Leave Application for
2 the company. Plaintiff returned to work on September 6, 2022. Plaintiff's pay for the leave due to
3 COVID-19 was forty (\$40) dollars less than what we was required to be paid. Defendants did not
4 correct this until September 28, 2022, when they sent her a letter in the mail with her check enclosed.

5 19. Defendants maintained a policy where similarly situated employees working at
6 Defendants' convenience stores were required to forfeit tips left by customers. Defendants' written
7 policy required similarly situated employees to put this money into the register, which Defendants then
8 took as part of their general revenues.

9 20. Defendants maintained a policy that paid \$500.00 to each similarly situated employee
10 that successfully passed a police decoy alcohol sting. The policy set forth specific steps that an
11 employee must perform in order to be eligible for the \$500.00 bonus. When paying these bonuses,
12 Plaintiff is informed and believes that Defendants did not incorporate the value of this payment into
13 similarly situated employees regular rate of pay for overtime purposes.

14 21. Plaintiff's wage statements did not include the inclusive dates of the period for which the
15 employee is paid. Instead, Plaintiff's wage statements only showed an end date. Plaintiff could not
16 properly confirm the accuracy of her wage statement without knowing the exact range of the statement.
17 Additionally, as a result of Defendants' failure to pay Plaintiff and similarly situated employees all
18 minimum wages and overtime wages owed, the wage statements Defendants issued were inaccurate.
19 The paystubs that Defendants issued did not itemize accurate regular and overtime hours worked,
20 premiums owed, and accurate gross and net wages earned. Consequently, Plaintiff and similarly
21 situated employees were not able to determine the total wages owed to them from their paystubs alone.

22 22. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated
23 employees all minimum wages and overtime wages owed.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**
26 **FAILURE TO PAY OVERTIME WAGES**
(As to all Defendants)

27 23. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 22 as though fully
28 set forth herein.

24. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 7, section (3)(A); Cal. Lab. Code §§ 510, 1194.

25. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay due to its rounding practices. *See Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022).

26. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

27. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

28. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 27 as though fully set forth herein.

29. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. See MW-Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code § 1194.

30. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so due to its rounding practices. *See Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022).

1 dates of the period for which the employee is paid. Instead, Plaintiff's wage statements only showed an
2 end date. Plaintiff and similarly situated employees were not able to promptly and easily determine their
3 total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees
4 suffered confusion over whether they received all wages owed and were prevented from effectively
5 challenging information on their wage statements.

6 35. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **FOURTH CAUSE OF ACTION**
10 **WAITING TIME PENALTIES**
11 **(As to all Defendants)**

12 36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully
13 set forth herein.

14 37. An employer must pay an employee who is terminated all unpaid wages immediately
15 upon termination. See Cal. Lab. Code § 201.

16 38. An employer must pay an employee who resigns all unpaid wages within seventy-two
17 (72) hours of their resignation. See Cal. Lab. Code § 202.

18 39. Plaintiff and similarly situated employees did not receive all wages, including minimum
19 and overtime wages, and meal and rest period premiums, at their termination or within the required time
20 after their separation from employment.

21 40. An employer who willfully fails to pay an employee wages in accordance with California
22 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
23 days. See Cal. Lab. Code § 203.

24 41. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
25 their final wages when their employment terminated. Indeed, Defendants knew of and actively enforced
26 its rounding practice despite being able to pay actual hours down to the minute based on time records it
27 kept for employees. Furthermore, Defendant failed to pay Plaintiff all her wages due to COVID-19
28 leave until approximately twenty days after her employment ended.

42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 432.7
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. California Labor Code section 432.7(a)(1) makes it unlawful for an employer to ask an applicant to disclose information “concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 of the Penal Code.”

45. California Labor Code section 432.7(c) provides that:

If a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

46. Defendants inquired about Plaintiff's criminal history including felonies, misdemeanors, infractions including but not limited to traffic violations before there was any conditional offer of employment. Defendants' form of questioning is too broad and is not specific enough to inquire only about Plaintiff's relevant conviction history. Defendants' failure to narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to law are not to be disclosed violates the statute given the broadness of the question. Thus, this was in violation of the law.

47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

//

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 432.6
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. California Labor Code section 432.6 provides that “[a] person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.”

50. The prohibition against waivers found in California Labor Code section 432.6 includes those found in California Government Code section 12952, which prohibits inquiry into any information related to an individual’s criminal history directly in an application or through other means directed at discovering criminal history. See Cal. Code Regs., tit. 2, § 11017.1(4).

51. Defendants inquired about Plaintiff’s criminal history including felonies, misdemeanors, infractions including but not limited to traffic violations before there was any conditional offer of employment. Defendants’ form of questioning is too broad and is not specific enough to inquire only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated pursuant to law are not to be disclosed violated the law against such disclosures. A further violation occurred when Defendants also required Plaintiff and similarly situated employees to sign waivers as a condition of employment that waiver claims related to Defendants improperly requiring disclosure of criminal history.

52. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth here in full.

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

53. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as though fully set forth herein.

54. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions (“B&P”) Code § 17200.

55. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, during their employment as a result of Defendants’ rounding practices.

56. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163 (2000).

57. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 510 and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully set forth herein.

59. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 432.6, 432.7, and 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waiver Relating Thereto)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

60. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

61. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

- 1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;
- 3 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 4 4. As to the Third Cause of Action:
- 5 a. Penalties as provided for in Labor Code section 226, including the greater of all
6 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
7 violation occurred and one hundred dollars (\$100.00) per employee for each
8 violation in the subsequent pay periods, but not to exceed four thousand dollars
9 (\$4,000.00);
- 10 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
11 226(e);
- 12 5. As to the Fourth Cause of Action:
- 13 a. For statutory penalties equal to Plaintiff and similarly situated employees daily
14 rate of pay multiplied by thirty (30) days;
- 15 6. As to the Fifth Cause of Action:
- 16 a. For any non-intentional violation, actual damages or two hundred dollars (\$200),
17 whichever is greater;
- 18 b. For any intentional violation, treble actual damages, or five hundred dollars
19 (\$500), whichever is greater,
- 20 c. Reasonable attorney's fees and costs;
- 21 7. As to the Sixth Cause of Action:
- 22 a. Actual damages as proven at trial;
- 23 b. declaratory relief;
- 24 c. reasonable attorney's fees and costs;
- 25 8. As to the Seventh Cause of Action:
- 26 a. Unpaid wages as proven at trial;
- 27 9. As to the Eighth Cause of Action:
- 28

- 1 a. For civil penalties as provided in the Labor Code for each enumerated
2 violation;
- 3 b. For those Labor Code sections where there is no civil penalty provided for their
4 violation, the default penalty provided in Labor Code section 2699(f): for any
5 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
6 period; For any subsequent violation, two hundred dollars (\$200) for each
7 aggrieved employee per pay period;
- 8 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 9 d. For any other remedies as allowed by law and/or deemed appropriate by the
10 Court;
- 11 10. For such other and further relief as this Court may deem just and proper,
12 including, but not limited to:
- 13 a. Wages as proved at trial;
- 14 b. Injunctive and Declaratory relief;
- 15 c. Attorney's fees and costs as provided for by law; and
- 16 d. Interest.

17
18 Dated: April 24, 2023

Shimoda & Rodriguez Law, PC

19
20 By: _____


Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

Brown v C.W. Brower, Inc.
Stanislaus County Superior Court of California CV-22-005735

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On May 2, 2023, I served the following documents on the party below:

- FIRST AMENDED COMPLAINT FOR DAMAGES

FREEMAN MATHIS & GARY, LLP Julia A. Marquis (SBN 178466) Liam Gaarder-Feingold (SBN 345747) Dane M. Willis (SBN 327901) 1010 B Street, Suite 400 San Rafael, CA 94901 Phone: 415-394-9500 Facsimile: 833-317-0293 E-mail: jmarquis@fmglaw.com dane.willis@fmglaw.com Liam.Gaarder-Feingold@fmglaw.com Joseph.Artieres@fmglaw.com spinkham@fmglaw.com	
---	--

[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on May 2, 2023, at Elk
3 Grove, California.

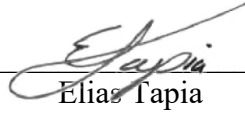
4 
Elias Tapia

Exhibit C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

December 9, 2022

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Brown v. C. W. Brower, Inc.*

Dear Labor Commissioner,

As counsel for Karina Brown (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

C. W. Brower, Inc.
413 South Riverside Drive, Ste A
Modesto, CA 95354

Libby Susan Pomeroy
413 South Riverside Drive, Ste A
Modesto, CA 95354

William Harris
413 South Riverside Drive, Ste A
Modesto, CA 95354

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against C.W. Brower, Inc., Libby Susan Pomeroy, and William Harris (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all similarly situated employees, pursuant to Labor Code section 2699(a). Specifically, similarly situated employees shall include, but is not limited to the following: all hourly non-exempt employees who have or continue to work for Defendants in California. For purposes of Count 6, similarly situated employees shall also include all individuals who applied to work for Defendants in California, regardless of whether or not they were ultimately hired. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff worked for Defendants from August 8, 2022, to September 9, 2022. Her hourly rate was \$16.00 per hour. Prior to receiving a conditional offer of employment, Defendants required Plaintiff and similarly situated employees to fill out and disclose, both directly and indirectly, information regarding gang related activity, an individual's ability to be bonded, arrests, and conviction history. Defendants sought new applicants and brought them in for interviews in groups, having Plaintiff and similarly situated employees fill out documents that required disclosing gang related activity, arrests, and conviction history. The inquiry further required Plaintiff to specify and explain any convictions. The inquiry did not specify a date range that the convictions must have occurred and did not specify what she did not need to include in her answer. Despite some of these documents stating that a conditional offer of employment had been made, this was untrue as these documents were filled out in Defendants lobby before the initial interview had even been completed. For example, Defendants discussed the information contained in Plaintiff's disclosure during her first meeting and interview before there was any conditional offer of employment made. Defendants also required Plaintiff and similarly situated employees to sign a document waiving claims relating to Defendants securing and investigating the information disclosed.

Plaintiff was employed by Defendants from August 8, 2022, to September 9, 2022. Her hourly rate was \$16.00 per hour. Plaintiff's work schedule was 8:00 a.m. to 4:00 p.m. five (5) days a week. Defendants had the ability to, and did, track Plaintiff and similarly situated employee's hours worked down to the minute. Plaintiff and similarly situated employees clocked in and out by swiping cards through a machine that logged the exact clock in/out time. Despite being able to pay the actual hours worked based on readily available time records, Defendants rounded Plaintiff's and similarly situated employee's hours worked and failed to pay them all minimum wages and overtime wages owed for those times in which the actual hours worked was rounded down. For example, Plaintiff was not paid approximately \$3.86 in unpaid overtime wages during her employment. Defendants do not have a rounding policy and failed to inform Plaintiff and similarly situated employees of the rounding practices. This resulted in unpaid overtime and minimum wages.

On September 23, 2022, Plaintiff emailed Defendants requesting her final check be mailed to her. However, Defendants responded to Plaintiff via email requesting that she leave a voicemail confirming that Defendants could mail the check and include her current mailing address, despite having an email request. On September 23, 2022, Plaintiff left a voicemail for Defendants once again requesting to have her check mailed to her. Defendants responded that the check would go out with that day's mail. This check did not include payment for the unpaid overtime and minimum wages that were lost due to rounding. On August 25, 2022, Plaintiff tested positive for COVID-19 and immediately informed Defendants. Plaintiff completed a California COVID-10 Leave Application for the company. Plaintiff returned to work on



September 6, 2022. Plaintiff's pay for the leave due to COVID-19 was forty (\$40) dollars less than what was required to be paid. Defendants did not correct this until September 28, 2022, when they sent her a letter in the mail with her check enclosed.

Defendants maintained a policy where similarly situated employees working at Defendants' convenience stores were required to forfeit tips left by customers. Defendants' written policy required similarly situated employees to put this money into the register, which Defendants then took as part of their general revenues.

Defendants maintained a policy that paid \$500.00 to each similarly situated employee that successfully passed a police decoy alcohol sting. The policy set forth specific steps that an employee must perform in order to be eligible for the \$500.00 bonus. When paying these bonuses, Plaintiff is informed and believes that Defendants did not incorporate the value of this payment into similarly situated employees regular rate of pay for overtime purposes.

Plaintiff's wage statements did not include the inclusive dates of the period for which the employee is paid. Instead, Plaintiff's wage statements only showed an end date. Plaintiff could not properly confirm the accuracy of her wage statement without knowing the exact range of the statement. Additionally, as a result of Defendants' failure to pay Plaintiff and similarly situated employees all minimum wages and overtime wages owed, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not itemize accurate regular and overtime hours worked, premiums owed, and accurate gross and net wages earned. Consequently, Plaintiff and similarly situated employees were not able to determine the total wages owed to them from their paystubs alone.

As of this date of this letter, Defendants have not paid Plaintiff and similarly situated employees all minimum wages and overtime wages owed.

B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees two (2) times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Similarly situated employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all similarly situated



employees are entitled to recover all unpaid overtime wages. Defendants failed to pay all overtime wages owed when it rounded down compensable time and underpaying Plaintiff and similarly situated employees despite having the time records showing additional time was owed. This was against the law. *See Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022).

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Similarly situated employees were employed by Defendants they were entitled to be paid at least the State’s minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 7, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and similarly situated employees for all hours worked. Plaintiff and all similarly situated employees are entitled to recover all unpaid minimum wages. Defendants failed to pay all minimum wages owed when it rounded down compensable time and underpaying Plaintiff and similarly situated employees despite having the time records showing additional time was owed. This was against the law. *See Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022)

Count 3 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and similarly situated employees. Defendants did not include the inclusive dates for the pay period in the wage statements. This is in violation of the law.

Count 4 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must



keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and similarly situated employees' wage records and hours worked. This was against the law.

Count 5 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum and overtime wages, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Similarly situated employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 6 – Violation of Labor Code §§ 432.6, 432.7, 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waivers Relating Thereto)

California Labor Code § 432.7(a)(1) makes it unlawful for an employer to ask an applicant to disclose information “concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.425, 1203.45, and 1210.1 of the Penal Code.” Moreover, Labor Code § 432.8 prohibits employers from asking job applicants about “convictions that are more than two years old for possession of marijuana.” Labor Code § 432.8 provides that “[t]he limitations on employers and the penalties provided for in Section 432.7 shall apply to a conviction for violation of subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of Section 11360 of the Health and Safety Code, or Section 11364, 11365, or 11550 of the Health and Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, two years from the date of such a conviction.” California Labor Code section 432.6 prohibits employers from requiring individuals to sign, as a condition of employment, any document waiving any right in the Fair Employment and Housing Act, including California Government Code section 12952, which prohibits inquiry into any information related to an individual's criminal history directly in an application or through other means directed at discovering criminal history. See Cal. Code Regs., tit. 2, § 11017.1(4).

As stated above, Defendants inquired about Plaintiff's and similarly situated employees' criminal history. Defendants' form of questioning was too broad and was done before any conditional offer of employment was made. Defendants' practice of preemptively seeking a waiver of claims arising out of these inquiries and follow up searches also violated the statutes. Thus, this was in violation of the law.



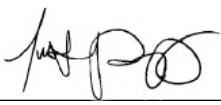
Count 7 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. Libby Susan Pomeroy is, and has been, the CEO and Director of the company for the past several years. Similarly, William Harris is, and has been, the Secretary and Chief Financial Officer for the company for the past several years. Libby Susan Pomeroy and William Harris were responsible for overseeing the policies and practices described herein. Libby Susan Pomeroy and William Harris were aware of, approved, and enforced these practices either by creating them, directly enforcing them, and/or training and counseling subordinates managers and supervisors to enforce them as detailed herein. Thus, Defendants, by and through Defendants agents, violated Plaintiff and similarly situated employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Justin P. Rodriguez

JPR:rk
cc: Client via e-mail

1 *Brown v C.W. Brower, Inc.*

2
3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

5 I, Elias Tapia, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party
7 to the within above-entitled action.

8 On December 9, 2022, I served the following documents on the party below:

- 9 • PRIVATE ATTORNEYS GENERAL ACT (PAGA) LETTER

10 C.W. Brower, Inc.
11 Libby Susan Pomeroy
12 William Harris
13 413 South Riverside Drive, Ste A
14 Modesto, CA 95354

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the
16 collection and processing of correspondence for mailing with the United
17 States Postal Service and that each day's mail is deposited with the United
18 States Postal Service that same day in the ordinary course of business. On the
19 date set forth above, I served the aforementioned document(s) on the parties in
said action by placing a true copy thereof enclosed in a sealed envelope with
postage thereon fully prepaid, for collection and mailing on this date,
following ordinary business practices, at Sacramento, California, addressed as
set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the
21 office of the addressee above.

22 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
shown above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
24 personally delivered via the following overnight courier service:_____.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct, and that this declaration was executed on December 9, 2022, at Elk
27 Grove, California.

28 
Elias Tapia

Exhibit D

Case Name: Brown v. CW Brower
Wednesday, May 1, 2024

Requesting Attorneys Name:	Justin Rodriguez
E-Mail:	jrodriguez@shimodalaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions

KEY ASSUMPTIONS	
Total Number of Class Members	1,025
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	No
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$650.00
Project Management:	\$1,430.00
Notification & Mailing:	\$2,720.25
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$5,034.75
Case Conclusion:	\$1,015.00
Total ILYM Fees & Expenses:	\$10,850.00
Discounted Capped Fees:	\$10,000.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Brown v. CW Brower

Wednesday, May 1, 2024

Requesting Attorneys Name: Justin Rodriguez

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Flat Rate	\$300.00	1	\$300.00
Toll Free Customer Service Representative	Flat Fee	\$350.00	1	\$350.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$1,430.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English only	Per Piece	\$1.50	1,025	\$1,537.50
USPS First Class Postage	Per Piece	\$0.64	1,025	\$656.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	154	\$307.50
Storage, Photocopies, Deliveries	Flat Fee	\$219.25	1	\$219.25

Subtotal \$2,720.25

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Brown v. CW Brower

Wednesday, May 1, 2024

Requesting Attorneys Name: Justin Rodriguez

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	4	\$600.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	4	\$500.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	1,025	\$1,025.00
USPS First Class Postage	Per Piece	\$0.64	1,025	\$656.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	103	\$153.75
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$5,034.75

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,015.00

Total Case Estimate: \$10,850.00
Discounted Capped Fees: \$10,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit E

Shimoda & Rodriguez Law, PC Costs - Karina Brown v. C.W. Brower, Inc.

Date	Description	Amount
10/26/2022	Administration Fee - Phone, Fax, Scan, copying, Westlaw Legal Research Fee	\$500.00
12-09-2022	Certified Mail -PAGA Letters to ER	\$12.33
12-09-2022	Payment to LWDA - PAGA Filing Fee	\$75.00
12-14-2022	One Legal Service Fee - Complaint cover sheet 19456527	\$12.87
12-16-2022	One Legal - Complaint 19469240 \$1435.00 court fee, \$55.31 filing fee, \$3.75 tech fee	\$1,494.06
12-23-2022	ALS Service Fee - complaint - inv 185089	\$98.50
02-16-2023	One Legal Service Fee - Proof of Service of Summons 19847038	\$17.04
02-16-2023	One Legal Service Fee - Proof of Service of Summons 19850334	\$13.33
04-04-2023	E-Filing Charge - Joint Stipulation to Continue CMC 20147928	\$13.33
04-11-2023	One Legal Service Fee - Stipulation & Order 20148886	\$37.78
04-26-2023	E-Filing Charge - Stipulation & PPSD Order	\$16.55
04-27-2023	One Legal Service Fee - Stipulation & Order 20296357	\$13.33
05-02-2023	One Legal Service Fee - Stipulation & Order 20299508	\$37.78
05-02-2023	E-Filing Charge - First Amended Complaint 20330865	\$17.04
07-10-2023	One Legal Service Fee - Case Management Conference order20760793	\$17.04
08-22-2023	Mediation fee to ADR	\$6,534.15
11-22-2023	One Legal Service Fee - Case management statement order 21674486	\$15.70
12-04-2023	Payment to Court - Case Management Conference e court fee	\$30.35
01-10-2024	Expenses - Hotel Stay for Mediation in Oakland.	\$177.65
01-18-2024	Parking - Mediation parking JR	\$50.00
02-02-2024	One Legal Service Fee - case management order 22152629	\$17.55
02-20-2024	Payment to Court - Case management conference ID 150231	\$30.35
Anticipated	One Legal Service Fee - Motion for Preliminary Approval	\$150.00
Anticipated	One Legal Service Fee - Motion for Final Approval	\$150.00
Anticipated	Compliance Declaration	\$35.00

Total \$ **9,566.73**

Exhibit F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. CV-22-005735

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: (1) All hourly non-exempt employees who have or continue to work for Defendant in California from December 14, 2018, to [REDACTED] ("Employee Subclass"); and (2) All individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 14, 2019, to [REDACTED] ("Applicant Subclass").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Stanislaus County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Karina Brown ("Plaintiff" or "Class Representative"), and Defendant C.W. Brower, Inc. ("Defendant") on behalf of Class Members, which includes both the Employee Subclass and the Applicant Subclass as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below) and are part of the [Employee/Applicant] Subclass, which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On December 14, 2022, Plaintiff filed a Complaint against Defendant in the Stanislaus County Superior Court of California on behalf of herself and Class Members. The term "Action" means this putative class action pending in Stanislaus County Superior Court, Case No. CV-22-005735. The for the Employee Subclass, Class Period means December 14, 2018, to [REDACTED]. For the Applicant Subclass, Class Period means December 14, 2019, to [REDACTED].

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself, Class Members, and Aggrieved Employees. Plaintiff asserted the following Causes of Action against Defendant: (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Wage Statement Violations, (4) Waiting Time Penalties, (5) Violation of Labor Code Section 432.7, (6) Violation of Labo Code section 432.6, (7) Unfair Competition, (8) Private Attorneys General Act. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all

allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all individuals within the Employee Subclass or Applicant Subclass as defined above. The Agreement also applies to Aggrieved Employees, which includes all hourly non-exempt employees who have or continue to work for Defendant in California from December 9, 2021, to [REDACTED] (“PAGA Employee Subclass”) and all individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 9, 2021, to [REDACTED] (“PAGA Applicant Subclass”). If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Sixty-Five Thousand Dollars (\$465,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$10,000, an Enhancement Payment to the Class Representative of \$10,000, and \$65,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. Of the \$65,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount and each Aggrieved Employee’s share of the PAGA Payment will depend on the number of weeks worked by Participating Class Members during the Class Period and their assigned subclass.

The number of weeks you worked during the Class Period, your assigned subclass, and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (i.e., those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, assigned subclasses, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees of their Individual Settlement Amount will **not** require the submission of a claim form. The Net Settlement Amount will be allocated among two subclasses, the Employee Subclass and the Applicant Subclass. Class Members shall not be members of both subclasses. To the extent a Class Member was hired and performed any work for Defendant, the Class Member shall be a part of the Employee Subclass. Four percent (4%) of the Net Settlement Amount shall be allocated to the Applicant Subclass and 96% of the Net Settlement Amount shall be allocated to the Employee Subclass. Distribution of the apportioned Net Settlement Amount to Participating Class Members within each subclass shall be as follows: Each Employee Subclass member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Employee Subclass members within the Class Period. That fraction will then be multiplied by the portion of the Net Settlement Amount allocated to the Employee Subclass to arrive at the individual’s share of the Net Settlement Amount. As the Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of the Net Settlement Amount allocated to the Applicant Subclass will be divided equally among all individuals within the Applicant Subclass.

The allocation of the PAGA Payment between the PAGA Employee Subclass and the PAGA Applicant Subclass will follow a similar allocation. Aggrieved Employees shall not be members of both subclasses. To the extent an Aggrieved Employee was hired and performed any work for Defendant, the individual shall be a part of the PAGA Employee Subclass. The Aggrieved Employee's share of the 25% portion of the PAGA Payment will be divided as follows: 96% for the PAGA Employee Subclass and 4% for the PAGA Applicant Subclass. The PAGA Employee Subclass shares will be determined by dividing those individual's total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Employee Subclass members within the PAGA Claim Period. That fraction will then be multiplied by the portion of the PAGA Payment allocated to PAGA Employee Subclass to arrive at that individual's share. As the PAGA Applicant Subclass will not have any weeks worked based on the nature of the claim, the portion of the PAGA Payment allocated to the PAGA Applicant Subclass will be divided equally among all individuals within the PAGA Applicant Subclass. These payments to Aggrieved Employees shall be allocated as 100% penalties and Aggrieved Employees will be responsible for paying any personal income taxes owed on the amounts they receive. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period and are part of the [PAGA Employee/PAGA Applicant] Subclass, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek & Subclass Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be postmarked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class Members who do not opt out will be deemed to have released . . . [1.30].

Aggrieved Employees will be deemed to have released . . . [1.31].

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek and assigned subclass information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation or subclass assignment, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement

Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Brown v. C.W. Brower, Inc.*, CV-22-005735); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e. *Brown v. C.W. Brower, Inc.*, CV-22-005735); (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

In addition to submitting a written objection, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of entry of judgment will be filed with the Court and available online at <https://stanportal.stanct.org/search>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ____, [address] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://stanportal.stanct.org/search>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez

Julie A. Marquis
Dane M. Willis

Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Freeman Mathis & Gary, LLP
1010 B Street, Suite 400
San Rafael, California 94901
Phone: 415-394-9500
Facsimile: 833-317-0293
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit G

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff KARINA BROWN
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for All Purposes to Hon. John D. Freeland
Department: 23*

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 13, 2024

Time: 8:30 a.m.

Dept.: 23

Judge: Hon. John D. Freeland

Filed: December 14, 2022

FAC Filed: May 5, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Karina Brown (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant C.W. Brower, Inc., (“Defendant”) failed to pay overtime wages, failed to pay minimum
10 wages, failed to provide accurate wage statements, waiting time penalties, violated Labor Code Section
11 432.7, violated Labor Code Section 432.6, and unfairly competed against other businesses. Plaintiff
12 also alleged liability for civil penalties under the Private Attorneys General Act (“PAGA”). These
13 claims were based allegations that Defendant violated California law by 1) failing to pay employees for
14 all hours worked by unlawfully rounding employees’ hours where it had the ability to track all actual
15 hours worked and ultimately rounded hours worked in a way that systematically benefited Defendant,
16 2) failing to incorporate the value of nondiscretionary bonuses paid to employees when they
17 successfully passed a police decoy alcohol sting into Plaintiff’s and putative Class Members’ regular
18 rates of pay for the purpose of calculating overtime wages, 3) failing to accurately itemize the hours
19 and wages earned on paystubs issued to Class Members, 4) providing wage statements that did not
20 include the inclusive dates of the period for which the employee is paid, 5) taking customer’s tips for
21 Plaintiff and similarly situated employees and included those tips in its revenues, and 6) maintaining a
22 criminal history disclosure policy that unlawfully required disclosure of arrests and gang related
23 activity not resulting in conviction. The PAGA, waiting time penalty, wage statement violation, and
24 unfair competition claims also derive from these violations.

25 3. Plaintiff is the only named representative in this matter. From our initial investigations
26 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
27 class action. We filed the action on or about December 14, 2022. Plaintiff exhausted administrative
28 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the

1 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on December 9, 2022, setting
2 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is
3 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified
4 mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the
5 LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days.
6 As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
7 Amended Complaint on May 2, 2023. A true and correct copy of Plaintiff's operative Complaint is
8 filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on May 2,
9 2023, after we received an endorsed copy back from Court.

10 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

11 5. Defendant is represented in this matter by Freeman Mathis & Gary, LLP. From the
12 beginning, Defendant has contested the merits of this case, the suitability of the case for class action or
13 representative treatment, the manageability of the case at trial, and Plaintiff's ability to prove a
14 violation in each pay period for each employee among other defenses and contentions they made
15 challenging the propriety of this action. Defendant further contended, even assuming there was a
16 finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion
17 to substantially reduce any such penalties owed based on evidence of good faith attempts to comply
18 with California Labor Code obligations by Defendant. Notwithstanding its agreement to settle this
19 matter, Defendant believe the practices Plaintiff is contending are unlawful either do not exist or, to the
20 extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff
21 and Class Members. Also, Defendant has contended that this matter is not appropriate for class
22 certification outside of this proposed class settlement.

23 6. Based on the expected testimony from Plaintiff and Class Members, a review of
24 Defendant's policies and procedures and other documents relating to the alleged claims, information on
25 the number of Class Members, Class Members' dates of employment, and a representative sample of
26 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
27 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
28 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The

length and risks of trial and other normal perils of litigation that impact the value of the claims were also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of potential class certification issues as well as the uncertainty of class certification, the difficulties of complex litigation, and the lengthy process of establishing specific damages and various possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

7. My office, our paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for such claims. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. From this production we were able to determine information critical to a reliable damages analysis such as the average hourly rate, average daily hours worked, average number of workweeks and pay periods that had potential violations based on the asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the number of former employees. This information allowed my office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this litigation including providing factual information relating to Plaintiff's and Class Members' employment conditions, providing a substantial number of documents, and answering questions regarding Defendant's factual contentions in this matter. This was important because it directly related to our ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.

1 8. Throughout this litigation our office had numerous communications with Defendant's
2 Counsel discussing our respective positions. The parties engaged in mediation on January 19, 2024,
3 using an experienced mediator, Mark LeHocky. It was only after approximately fifteen (15) months of
4 extensive, arm's length negotiations that the parties were able to reach a settlement and enter into the
5 Agreement, which only occurred after a full-day mediation and mediator's proposal. The negotiations
6 were at all times contentious and adversarial, though still professional in nature.

7 9. The parties reviewed and analyzed substantial amounts of data regarding the class
8 claims. Based on our analysis and review of all relevant documents, Class Member workweek, payroll,
9 and sample data, and the information and argument presented by Defendant in this matter, I have
10 determined that the maximum damages for the asserted class claims is approximately \$4,376,803.75,
11 which includes civil penalties under the PAGA. The likely exposure for PAGA penalties is
12 approximately \$1,783,846 based on the counts alleged to the LWDA and the class data. Based on our
13 research, we did not find any prior Labor Commissioner or court decisions that stated Defendants'
14 practices and/or policies were improper. As such, a "subsequent violation" may not be found for
15 penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation
16 being adopted by any fact finder if this matter went to trial.

17 10. However, I believe the PAGA penalties in this case may be reduced due to the fact that
18 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
19 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
20 Defendants produced a substantial number of documents and arguments that a Court may find
21 demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. Courts
22 regularly cut civil penalties on PAGA claims where statutory penalties for the same violations are
23 assessed as well. Courts are statutorily authorized to use discretion to reduce penalties and the range of
24 discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th
25 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9
26 (C.D. Cal. 2011) (82% reduction). Thus, civil penalties may be cut to approximately \$321,092.28
27 (82% reduction) or lower given the derivative recovery. The likely recovery if Plaintiff was successful
28 at trial on proving all the substantive class damages plus civil penalties after a reduction of the PAGA

penalties would be approximately \$2,914,050.03. Taking this into account, Plaintiff's \$465,000 gross recovery under the Agreement represents approximately 16% of the more likely maximum value in this matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative, Settlement Administrator Costs, and the 75% portion of the PAGA Payment to the LWDA, the \$228,500 net recovery under the Agreement represents approximately 8% of the likely maximum value in this matter. On average, Class Members will receive approximately \$233.88.

11. Because two of the stated causes of action applied to individuals who merely applied to work for Defendant, there was a stark difference in the value of potential claims for those who merely applied for work and those who were ultimately hired. Those that merely applied would not have experienced any rounding, regular rate of pay, or other derivative violations. Similarly, there would be no weeks worked for this group. For this reason, the Agreement establishes subclasses for purposes of allocating payments between Class Members that reflect the relative values of the claims for each group. The total damages resulting from the Fifth and Sixth Causes of Action (Violation of Labor Code Sections 432.6 & 432.7), which would include the Applicant Subclass, represented approximately 4% of the total damages for all asserted claims. For this reason, the Agreement allocates 4% of the Net Settlement Amount to the Applicant Subclass. Payment of this amount will be divided equally between all individuals within this subclass. The remainder will be allocated to the Employee Subclass, consistent with the relative value of the claims for each group. Payment of the amount allocated to the Employee Subclass will be based on workweeks as set forth in the Agreement. There are approximately 977 Class Members, which includes approximately 555 individuals within the Employee Subclass and 422 individuals within the Applicant Subclass.

12. I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

13. In agreeing to represent Plaintiff and take on the case for all Class Members, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any

1 settlement or judgment should we recover a monetary amount. We took a risk that we would not
2 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
3 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
4 make sure employees are able to find affordable representation in order to ensure that employers are
5 complying with all their legal obligations towards employees and paying employees all their hard-
6 earned wages.

7 14. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
8 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I
9 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
10 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
11 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
12 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
13 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
14 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
15 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
16 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
17 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
18 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
19 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
20 and an officer for the Latino Law Students Association from 2009 to 2010.

21 15. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
22 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
23 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
24 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I was
25 been recognized as a Super Lawyer (Rising Star) and, in 2024, I was recognized at a Super Lawyer. In
26 September 2018, I was a panel speaker for the Sacramento County Bar Association Labor and
27 Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment
28 Arbitration in California." In July 2020, I was a panel speaker for the Association of Defense Counsel

of Northern California & Nevada presentation of “Class Actions and PAGA Claims.” My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act (“FLSA”) claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613

(Sac. Sup. Ct.);

- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);

- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

16. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

17. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the

1 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
2 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
3 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
4 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
5 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
6 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
7 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
8 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
9 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
10 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
11 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
12 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
13 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
14 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
15 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
16 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
17 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
18 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
19 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and has been
20 recognized as a Super Lawyer from 2014 to the present.

21 18. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
22 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
23 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
24 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
25 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
26 Federal Courts, including up to certification, settlement, preliminary and final approval, and
27 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
28

1 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
2 include the following:

- 3 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 4 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 5 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 6 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 7 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 8 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 9 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 10 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 11 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
12 Ct.);
- 13 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 14 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 15 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
16 Ct.);
- 17 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
18 Sup. Ct.);
- 19 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 20 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 21 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 22 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
23 (Sac. Sup. Ct.);
- 24 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 25 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 26 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 27 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San
28 Joaquin Sup. Ct.);

- 1 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 2 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup.
- 3 Ct.);
- 4 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 5 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 6 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup.
- 7 Ct.);
- 8 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 9 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 10 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 11 • *Hernandez et al. v. MP Nexlevel, LLC et al.*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 12 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 13 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 14 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 15 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 16 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 17 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 18 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 19 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 20 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup.
- 21 Ct.);
- 22 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 23 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 24 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 25 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 26 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 27 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 28 (Sac Sup. Ct.);

- 1 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup.
- 2 Ct.);
- 3 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 4 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 5 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 6 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 7 Sup. Ct.);
- 8 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 9 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 10 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 11 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

12 19. The preceding list of cases does not include those where, for a variety of reasons, the
13 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
14 of the case.

15 20. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
16 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
17 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
18 individual and class action cases, including those involving wage and hour claims, Private Attorney
19 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
20 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
21 as an associate at my firm from approximately April 2019 to February 2021. He rejoined my firm in
22 September 2022. Mr. Konini has experience drafting written discovery, taking and defending
23 depositions, calculating class-wide damages, interviewing putative class members, drafting motions
24 and briefs on complex class action procedures, negotiating class and individual damages claims, and
25 communicating with opposing counsel regarding these items in navigating the litigation. Mr. Konini
26 has also worked on other class and/or PAGA wage and hour actions that my firm has filed, namely
27 *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v.*
28 *Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v.*

1 *Vander Schaaf Dairy*, et al., Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins*
2 *v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources,*
3 *Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*
4 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
5 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
6 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
7 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
8 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
9 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
10 Sup. Ct), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
11 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr.
12 Konini's practice largely revolves around wage and hour matters, including class and PAGA claims.

13 21. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
14 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
15 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
16 *Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm has been able to secure an
17 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should
18 be borne equally amongst all class members receiving these benefits. The settlement recovery provides
19 an excellent result and is the product of substantial time and effort in analyzing the facts and law
20 applicable to this case. I agreed to take this case on a contingency basis and as a class action with the
21 possibility that I would not receive any compensation for my time and efforts due to issues regarding
22 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
23 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
24 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
25 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
26 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own
27 firm and working with several other firms has been that the typical percentage negotiated between
28 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same

factors. I have also reviewed several recent Federal District Court Cases where the Court has approved common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695. I believe my request of \$162,750 (approximately 35%) for attorney's fees is justified given the results obtained on behalf of the class. Moreover, at this time, all costs have been advanced by our firm, which has not received any compensation whatsoever for our time expended in this case. The expected total costs through final approval by Class Counsel are not expected to exceed \$15,000. Filed with this Motion as Exhibit E is a true and correct copy of the costs incurred to date and expected to be incurred through the completion of this case by Shimoda & Rodriguez Law, PC,. Any difference in the actual costs and the maximum amount allocated under the Agreement will be added to the Net Settlement Amount.

22. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe ILYM Group, Inc., will provide the best service to administer the proposed class settlement. ILYM Group, Inc., has provided a quote for the estimated maximum cost of administering the class settlement of approximately \$10,000. A true and correct copy of a cost estimate provided by ILYM Group, Inc., is filed with this Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during the administration of the settlement. However, the difference between the actual, lesser costs and \$10,000, if any, will be paid to the Participating Class Members on a pro rata basis.

23. A copy of the Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit G.

1 24. A true and correct copy of the proposed Notice of Settlement is being filed with this
2 Motion as Exhibit F.

3 25. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and
4 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement
5 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

6 26. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
7 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
8 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
9 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
10 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
11 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
12 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
13 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
14 Superior Court.

15 27. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
16 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
17 their current or former employment. This assistance regularly includes, but is not limited to, free legal
18 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
19 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
20 forms, and direct representation in administrative hearings, including administrative hearings in front of
21 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
22 who provide assistance, along with experienced employment law attorney volunteers. These services
23 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
24 and continuing through today under CPB.

25 28. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
26 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
27 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
28 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with

workers and advises them as to the available legal remedies. In addition to individual counseling on employment issues, the CFWR educates workers, unions, and community members about workplace laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

29. The CFWR provides limited representation for low-wage workers in wage claims before the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The CFWR helps workers navigate the wage claim process before the California Labor Commissioner through advice given at its legal consultation clinics and/or, in some cases, through representing workers in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated towards assisting low-wage workers with wage claims and enforcing the California Labor Code with respect to those wage claims.

30. I believe the services provided by CPB and the CFWR promote the law consistent with the objective of wage and hour class actions in general and in this case specifically.

31. I have spoken with every other attorney at my firm to determine whether they have any relationship with either of the proposed *cy pres* beneficiaries.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 7, 2024, in Elk Grove, California.


Justin P. Rodriguez

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Attorneys for Plaintiff KARINA BROWN
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for All Purposes to Hon. John D.
Freeland, Department 23*

**DECLARATION OF KARINA BROWN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 13, 2024

Time: 8:30 a.m.

Dept.: 23

Judge: Hon. John D. Freeland

Filed: December 14, 2022

FAC Filed: May 5, 2023

Trial Date: None Set

1 I, Karina Brown, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant C.W. Brower, Inc. ("Defendant") from approximately August 8,
6 2022, to September 9, 2022 as a non-exempt employee. I was subject to all of Defendant's policies and
7 practices that have been alleged as unlawful in the Complaint and the notice sent to the Labor and
8 Workforce Development Agency, including the following: failure to pay overtime, failure to pay
9 minimum wages, failure to provide accurate wage statements, failure to timely pay final wages,
10 violation of Labor Code Section 432.7, violation of Labor Code Section 432.6, and unfair competition.

11 3. I have actively participated in the litigation of this case for the benefit of all Class
12 Members. Prior to obtaining an attorney, I performed several hours of research trying to find a quality
13 attorney to handle the claims. I also performed several hours of research on the potential claims, so I
14 could be sure I could have an informed discussion with the attorneys about the claims and have a better
15 idea of what to expect in litigation and how to help the case proceed. After securing Shimoda &
16 Rodriguez Law, PC, I continued to be actively involved in the case to help ensure a positive outcome.

17 4. My attorneys explained to me the risks and benefits of bringing a class action and a
18 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
19 class and PAGA action meant that it would take substantially longer than pursuing my claims
20 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
21 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
22 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
23 as a class and PAGA action rather than pursuing my claims individually, including the risk of having to
24 pay Defendant's costs if we were unsuccessful in bringing our claims.

25 5. During the course of this litigation, I have given detailed accounts of all the facts related
26 to my employment. I provided my attorneys with extensive documentation that I believe supported the
27 claims brought against Defendant. I met with and assisted my attorneys in understanding these
28 documents and providing context for Defendant's payroll process as it applied to me and how I

1 believed it applied to Defendant's other employees. I also sought out witnesses for my attorneys to
2 interview to help support the claims.

3 6. The work I performed for this case included an extensive review of documents and
4 payroll practices to show and explain to my attorneys what was happening and why I thought it was
5 unlawful. I maintained communication with my attorneys throughout the litigation, discussing the facts
6 and policies at issue in the case with them. I asked questions when I needed clarification about various
7 aspects of this case to make sure there were continually steps taken to advance the interests of the class.
8 I also understood that the recovery in this case was for the benefit of my fellow coworkers, not just for
9 me. When my attorneys contacted me asking for more information or documents related to the case, I
10 made myself available and tried to give or obtain any additional information I could. I participated in
11 the negotiations and settlement discussions in this case, including participating in mediation by phone,
12 speaking with my attorney to answer questions, providing any additional information needed to assist
13 the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy.

14 7. Although I have already spent a substantial amount of time on this case and assisting my
15 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
16 granted because Class Members will likely reach out to me about the Settlement and the process for
17 receiving payment.

18 8. I have not received any benefits as a result of filing this lawsuit. I have, however,
19 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
20 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs
21 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
22 because the costs associated with litigation, in general, are very high and this cost is multiplied many
23 times over in complex litigation like class actions. I have spent a substantial amount of time in this
24 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
25 have the opportunity to receive it. Finally, as part of the Settlement, I am the only individual providing
26 a general release of all my individual claims and unknown claims. No other Class Member is subject to
27 such a broad release.

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Attorneys for Plaintiff KARINA BROWN
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

C.W. BROWER, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CV-22-005735

CLASS ACTION

*Assigned for All Purposes to Hon. John D.
Freeland, Department 23*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 13, 2024

Time: 8:30 a.m.

Dept.: 23

Judge: Hon. John D. Freeland

Filed: December 14, 2022

FAC Filed: May 5, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on June 13, 2024, at 8:30 a.m., in Department 23 before
4 the Honorable John D. Freeland, presiding. Named Plaintiff Karina Brown (“Plaintiff”) filed this
5 putative class action on December 14, 2022. The operative Complaint alleges that Defendant C.W.
6 Brower, Inc. (“Defendant”) violated California law by failing to pay overtime wages, failing to pay
7 minimum wages, failing to provide accurate wage statements, waiting time penalties, violating Labor
8 Code Section 432.7, violating Labor Code Section 432.6, and unfairly competing against other
9 businesses. Plaintiff has also alleged Defendant is liable for civil penalties under the Private
10 Attorney’s General Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs
11 as part of this Action. Defendant denied all of Plaintiff’s claims and denied that this case was
12 appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
14 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
15 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
16 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
17 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary
18 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
19 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
20 DETERMINATIONS AS FOLLOWS:

21 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
22 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following subclasses for the identified causes of action
24 for settlement purposes only is appropriate under the California Code of Civil Procedure and related
25 case law:

26 The certified settlement class shall include the following Class Members:

- 27 • Employee Subclass (First through Fourth and Seventh Causes of Action):
28 All hourly non-exempt employees who have or continue to work for
Defendant in California from December 14, 2018, to March 19, 2024; and

- Applicant Subclass (Fifth and Sixth Causes of Action): All individuals who applied to work for Defendant in California, regardless of whether or not they were ultimately hired from December 14, 2019, to March 19, 2024

The Court finds that Class Members meet the ascertainability and numerosity requirements since the parties can identify with a matter of certainty, based on employment application and payroll records, individuals who fall within the definition and the number of Class Members would make joinder impractical. The commonality and predominance requirements are met for settlement purposes since there are questions of law and fact common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above by 1) failing to pay employees for all hours worked by unlawfully rounding employees' hours where it had the ability to track all actual hours worked and ultimately rounded hours worked in a way that systematically benefited Defendant, 2) failing to incorporate the value of nondiscretionary bonuses paid to employees when they successfully passed a police decoy alcohol sting into Plaintiff's and putative Class Members' regular rates of pay for the purpose of calculating overtime wages, 3) failing to accurately itemize the hours and wages earned on paystubs issued to Class Members, 4) providing wage statements that did not include the inclusive dates of the period for which the employee is paid, 5) taking customer's tips for Plaintiff and similarly situated employees and included those tips in its revenues, and 6) maintaining a criminal history disclosure policy that unlawfully required disclosure of arrests and gang related activity not resulting in conviction. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from these violations. Additionally, Class Members seek the same remedies under state law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class Representative are based on the same facts and legal theories as those applicable to the Class Members.

The Court also finds that preliminarily and conditionally certifying the settlement class is required to avoid each Class Member from litigating similar claims individually. This Settlement will achieve economies of scale for Class Members with relatively small individual claims and conserve the resources of the judicial system.

1 The Court finds that Plaintiff Karina Brown and Plaintiff's counsel, Galen T. Shimoda,
2 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
3 representatives of the settlement class. The Court appoints them as Class Representative and Class
4 Counsel, respectively.

5 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

6 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
7 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
8 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
9 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
10 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
11 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
12 of continued litigation. The Court also acknowledges that Class Members may present any objections to
13 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
14 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
15 therein as if stated here in full, including the \$465,000 Gross Settlement Amount.

16 The Court approves of ILYM Group, Inc., acting as the Settlement Administrator in this case and
17 hereby appoints them to fulfill those duties as outlined in the Agreement. The Settlement Administrator
18 will take its fees out of the Gross Settlement Amount, which fees are not to exceed \$10,000. Any
19 difference between the actual cost of the Settlement Administrator and the approved payment will be
20 redistributed to Participating Class Members on a pro-rata basis.

21 The Court orders that Plaintiff Karina Brown will receive \$10,000 as a Class Representative
22 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
23 rata distribution formula for Plaintiff's time and effort on behalf of Class Members in addition to her
24 execution of a general release of claims under the Agreement.

25 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
26 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
27 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
28 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request

1 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
2 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
3 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
4 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.* \$162,750, to be appropriate compensation
5 for Class Counsel. The attorney's fees request is within the range that has been approved by other
6 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
7 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
8 the course of this case, which included potential loss at summary judgment, certification, and/or trial
9 proceedings. Additionally, the Court orders that up to \$15,000 of the settlement proceeds will be paid to
10 Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
11 incurred and the \$15,000 shall be paid to the Participating Class Members on a pro-rata basis.

12 To the extent the Court ultimately awards less than the amounts allocated under the Agreement
13 for attorney's fees and costs, for an Enhancement Payment to the Class Representative, and/or
14 Settlement Administrator Costs, the difference between the amounts awarded and the amounts requested
15 shall be added to the Net Settlement Amount for distribution to Participating Class Members pro rata as
16 set forth in the Agreement.

17 The Court approves of the sixty-five thousand dollars (\$65,000) PAGA Payment, which shall be
18 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
19 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
20 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
21 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
22 provides a recovery that creates an effective, substantial deterrent to any potential future non-
23 compliance, furthering the purpose of the Labor Code and LWDA.

24 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
25 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
26 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
27 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
28 Gross Settlement Amount will revert to Defendant for any reason.

1 The releases and waivers for Class Members who do not opt out of being bound by the
2 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
3 also approved by the Court as set forth in the Agreement.

4 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
5 **INCLUDING THE NOTICE OF SETTLEMENT**

6 The Court finds that the proposed Notice of Settlement, filed with the Motion as Exhibit F and
7 incorporated by reference, fairly and adequately advises Class Members of the terms of the Agreement,
8 the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked
9 during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the
10 settlement, how to file documentation in opposition to the proposed settlement, and when to appear at
11 the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice
12 of Settlement and proposed distribution of such notice by first class mail to each identified Class
13 Member at his or her most recent address based on a National Change of Address database search from
14 the Class Members' last known address and a skip trace on any Class Members who have the Notice of
15 Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
16 requirements, including those of due process.

17 The Court also finds that because there is a strong interest in providing Class Members the
18 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
19 privacy rights, the sharing of employment information, including social security numbers, is not a
20 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide Class Member
21 information to the Settlement Administrator as set forth in the Agreement, including the first and last
22 name, last known mailing address, last known telephone number, Social Security Number, start and end
23 date (if any) of employment of each Class Member and Aggrieved Employee, the Qualifying
24 Workweeks for the class payment from the Net Settlement Amount, the Qualifying Workweeks for the
25 PAGA Payment, and any other information the Settlement Administrator needs to effectuate notice to
26 Class Members and Aggrieved Employees as outlined herein, including the assigned subclass for the
27 Class Member and/or Aggrieved Employee. The Class Member information will be provided to the
28 Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement

as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of October 16, 2024, at 8:30 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel. The hearing on the Court's Motion to Dismiss, set to be heard at 8:30 a.m. on August 23, 2024, is hereby vacated.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Attorneys for Plaintiff KARINA BROWN
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

KARINA BROWN, individually and on behalf
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Case No. CV-22-005735

CLASS ACTION

*Assigned for All Purposes to Hon. John D. Freeland
Department: 23*

PROOF OF SERVICE

Date: June 13, 2024
Time: 8:30 a.m.
Dept.: 23
Judge: Hon. John D. Freeland

Filed: December 14, 2022
FAC Filed: May 5, 2023
Trial Date: None Set

Brown v C.W. Brower, Inc.
Stanislaus County Superior Court of California CV-22-005735

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On May 7, 2024, I served the following documents on the party below:

- **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF KARINA BROWN IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

FREEMAN MATHIS & GARY, LLP Julia A. Marquis (SBN 178466) Liam Gaarder-Feingold (SBN 345747) Dane M. Willis (SBN 327901) 1010 B Street, Suite 400 San Rafael, CA 94901 Phone: 415-394-9500 Facsimile: 833-317-0293 E-mail: jmarquis@fmglaw.com dane.willis@fmglaw.com Liam.Gaarder-Feingold@fmglaw.com Joseph.Artieres@fmglaw.com spinkham@fmglaw.com	
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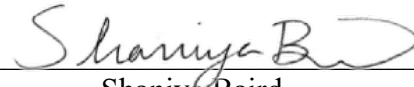
1 [] [By Mail] I am familiar with my employer's practice for the collection and
2 processing of correspondence for mailing with the United States Postal
3 Service and that each day's mail is deposited with the United States Postal
4 Service that same day in the ordinary course of business. On the date set forth
5 above, I served the aforementioned document(s) on the parties in said action
6 by placing a true copy thereof enclosed in a sealed envelope with postage
7 thereon fully prepaid, for collection and mailing on this date, following
8 ordinary business practices, at Salt Lake City, Utah, addressed as set forth
9 above.

6 [] [By Personal Service] By personally delivering a true copy thereof to the
7 office of the addressee above.

8 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
9 shown above. No error was reported by the e-mail service that I used.

9 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
10 personally delivered via the following overnight courier service: _____.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct, and that this declaration was executed on May 7, 2024, at Salt Lake
13 City, Utah.

14 

Shaniya Baird