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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

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| KEITH O'SHEA on behalf of himself, all others similarly situated, and on behalf of the general public,<br><br>Plaintiffs,<br><br>v.<br><br>VECTOR LABORATORIES, INC.; and DOES 1-100,<br><br>Defendants. | Case No. 23CV035196<br><br>[*Assigned for all purposes to the Honorable Michael Markman, Dept. 23*]<br><br>**PLAINTIFF KEITH O'SHEA'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE**<br><br>Date: October 14, 2025<br>Time: 10:00 a.m.<br>Reservation ID: 229874284439<br><br>Complaint Filed: June 6, 2023<br>Trial Date: None Set |

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## I. INTRODUCTION

Plaintiff Keith O'Shea (hereinafter "Plaintiff"), on behalf of himself and the approximately 75-member putative class, respectfully requests that this Court preliminarily approve the Joint Stipulation and Settlement Agreement (hereinafter "Agreement" [1]) entered into between Plaintiff and Defendant Vector Laboratories, Inc. (hereinafter "Defendant" or "Vector") (collectively Plaintiff and Defendant are referred to as the "Parties"). The proposed Class is comprised of all hourly, non-exempt employees (a) who are or were employed by Defendant in California at any time from June 6, 2019, through the date the Court grants Preliminary Approval (the "Class Period"); and (b) and who did not already release all of their claims against Defendant during the Class Period. (Exhibit 1 at Section I, Paragraph 6, Page 2; Section I, Paragraph 11, Page 2). The Parties' Agreement seeks to resolve claims in this matter in exchange for a non-reversionary $179,750 Gross Settlement Amount. This settlement is estimated to pay Class Members an average payment of approximately $234.45.

It is requested that the Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the claims and Defendant's potential liability exposure, this proposed settlement is within the range of reasonableness. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC and Lawyers for Employee and Consumer Rights as Class Counsel; (5) approval of the Parties' proposed Class Notice and method of notifying the Class about the settlement; and (6) a hearing date for final approval of February 26, 2026, or other available date for the Court.

## II. BACKGROUND

Defendant manufactures and ships proteomic and glycemic solutions. In order to carry out its business, Defendant employs hourly non-exempt employees, like Plaintiff.

Plaintiff filed this wage and hour class action on June 6, 2023 (Case No. 23CV035196). (Mara Dec. ¶ 10). In addition, on June 6, 2023, Plaintiff provided notice to the Labor and

[1] The Parties' Agreement is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as Exhibit 1. "Exhibit 1" herein refers to the Parties' Agreement.

Workforce Development Agency ("LWDA"). (*Id.* at ¶ 11). Plaintiff then filed a PAGA action on October 30, 2023 (Case No. 23CV049223). (*Id.* at ¶ 12).

## III. INVESTIGATION/LITIGATION HISTORY

### a. Discovery and Investigation

The Parties engaged in both informal and formal discovery and engaged in extensive meet and confer efforts that led to two Informal Discovery Conferences with the Court. As a result of the Parties' discovery efforts, Defendant produced hundreds of pages of documents, including employee handbooks in place during the class period and Plaintiff's personnel file. Defendant also produced Excel files that contained time and pay records for all Class Members. Plaintiff had an expert conduct an analysis of these records. In addition, Plaintiff produced almost a hundred documents including wage statements, test messages and emails he received during his employment, and his bank records for the period of time he worked for Defendant in redacted format. Further, on March 28, 2025, Defendant took Plaintiff's deposition. (Mara Dec. ¶¶ 14-21).

### b. The Parties Attended Mediation and Engaged in Continued Discussions

The Parties attended an all-day mediation presided over by wage and hour mediator Kelly A. Knight on May 28, 2024. This mediation was unsuccessful. On or about April 7, 2025, Mr. Knight reengaged the Parties in settlement negotiations. By the end of May of 2025, the Parties reached a settlement-in-principle. The Parties then met and conferred over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties now seek preliminary approval of the Agreement. (*See* Mara Dec. ¶ 22; *see also* Exhibit 1 attached thereto).

### c. The Parties' Staunchly Conflicting Positions

#### i. Wage Statements

Plaintiff alleges that Defendant's wage statements fail to list the name of the legal entity that is the employer and the full address of the legal entity that is the employer in violation of California Labor Code § 226. Plaintiff contends that the legal name of the employer is not provided, and no city, state, or zip code is provided with the employer's address. (Mara Dec. ¶ 23).

Defendant contends that it provided employees with lawful wage statements that complied with California Labor Code § 226. Defendant contends that to the extent its wage statements did not accurately list the employer information, this was an isolated incident that did not occur during the entire Class Period. Further, Defendant asserts that any violation of California Labor Code § 226 was not "knowing and intentional."[2] Defendant further contends that employees cannot show that they have suffered an injury because of any potential violation of California Labor Code § 226. Defendant contends that employees knew to talk to their supervisor if they had any questions or concerns with their wage statements. As such, disputes exist as to whether Defendant's wage statements violated California Labor Code § 226(a), whether any such violation was knowing and intentional, and whether employees suffered an injury. (Mara Dec. ¶ 24).

**ii. Meal Periods**

Plaintiff contends that Defendant does not provide employees with meal periods that conform with California law because its records show meal period violations. In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision, wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable presumption that the meal periods were not provided. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed that meal period violations occurred. (Mara Dec. ¶¶ 26-27).

Defendant counters that it would be able to rebut this presumption because its meal period policy is lawful. Further, Defendant alleges that if litigation continues it would be able to show that it advised employees of the right to take a meal period in compliance with California law. Defendant contends that employees either took a lawful meal period or knowingly and voluntarily decided to skip the meal period or take a late or short meal period. Defendant asserts that in rebutting the presumption, the Court or fact finder would have to ask each employee why their time records show a non-compliant meal period. To make this determination, Defendant contends the Court or fact finder would have to ask each employee about each instance which would defeat certification as individual issues would predominate. Defendant also asserts that the evidence in

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[2] *See* Cal. Lab. Code § 226(e) ("An employee suffering injury as a result of a ***knowing and intentional*** failure by an employer" may recover damages") (emphasis added); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 ("Some statutory penalties are imposed only if an employers' violation was 'willful' or 'knowing.' . . . [*S*]*ection 226, subdivision (e)* penalizes an employer's 'knowing and intentional' failure to provide itemized wage statements under *section 226, subdivision (a)*[.]").

this case shows that it paid meal period premiums in shifts in which employees were not provided with compliant meal periods. Thus, Defendant contends that to the extent an employee was not provided the opportunity to take a legally compliant meal period, they were provided a meal premium. (Mara Dec. ¶ 28).

**iii. Rest Periods**

Plaintiff contends that Defendant does not provide net ten-minute rest periods. In California, the ten (10) minute rest break must be a net ten (10) minutes in a suitable rest area. None of the time allotted for rest breaks can be consumed by the time it takes to get to a suitable rest area. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 267-268 (relying on January 3, 1986 and February 22, 2002 Department of Labor Standards Enforcement Letters wherein the DLSE ruled that the net ten-minute language for rest breaks means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). Plaintiff asserts that Defendant does not provide employees with net ten-minute rest periods. (Mara Dec. ¶ 30).

Defendant asserts that its rest period policy is lawful and that it provides employees with rest periods in compliance with California law. Defendant contends that if litigation were to continue, it would provide declarations from employees stating that they knew they were entitled to rest periods in accordance with California law and that they were able to take full ten-minute rest periods at a suitable rest area. Defendant contends that it resolving this issue, the Court would have to ask each employee whether or not they received a full ten-minute rest period which would defeat certification. (Mara Dec. ¶ 31).

**iv. Business Reimbursement**

Plaintiff alleges that employees are not reimbursed for all business expenses. Under Labor Code § 2802, an employer must "indemnify its employees for expenses they necessarily incur in the discharge of their duties…" *Gattuso v. Harte-Hanks Shoppers, Inc.* (2015) 169 P.3d 889. In *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140, it was held that § 2802 requires employers to always reimburse employees who are required to use personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. Here, Plaintiff asserts that employees are required to use their personal cell phones for business purposes but are not reimbursed for this expense. Plaintiff asserts that Defendant requires employees to install an ADP application on their personal cell phones to record time employees work. (Mara Dec. ¶ 33).

Defendant asserts that employees do not need to use their personal cell phones to clock in and that employees can clock in on any computer in Defendant's facility. Defendant argues that employers must only reimburse employees for "necessary expenditures" under California Labor Code § 2802. As such, employees must show that they incurred the expense, the expenses were necessary to discharge their duties, and the expenses were not reimbursed. Defendant contends that there is not a necessity for employees to use their personal cell phones. (Mara Dec. ¶ 34).

**v. Waiting Time Penalties**

Plaintiff also contends that Defendant failed to pay employees their final wages within the timeframes outlined by California law. This claim is derivative of Plaintiff's meal period and rest period claims. Should Plaintiff's meal period and rest period claims fail, these claims would also fail. (Mara Dec. ¶ 36). Defendant contends that even if Plaintiff were successful in his meal and rest period claims, he would have to prove Defendant "willfully" failed to pay employees the appropriate wages due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not willful. Defendant argues that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those premium wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (*Id.* at ¶ 37).

## IV. TERMS OF THE PROPOSED SETTLEMENT

**a. Deductions from the Settlement**

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of $179,750 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of up to $59,916 (one third of the GSA)[3]; (b) litigation costs estimated at approximately, and not to exceed, $45,000;[4] (c) a Class Representative Service Payment to the named class representative in a sum not to exceed $10,000; (d) settlement administration fees and expenses to ILYM Group, Inc. (hereinafter "ILYM"), estimated not to exceed approximately $7,500;[5] and (e) $10,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or $7,500 will be provided to the LWDA, and 25%, or $2,500, will be available for distribution to Aggrieved Employees. After these deductions from the GSA, the Net Settlement Amount ("NSA") is approximately $47,334. At the end of 2024, Defendant entered into individual settlement agreements with some of the Class Members in exchange for a release of claims. The settlement funds that Defendant has already paid to Class Members will be a credit to Defendant. The employer's share of taxes will be paid in addition to and outside of the GSA. (*See* Exhibit 1 at Section I, Paragraph 21, Page 3).

**b. Calculation of the Settlement Payments to Class Members**

The Net Settlement Amount, less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members. Subject to the terms and conditions of the settlement, each Participating Class Member will receive a proportionate share of the Net Settlement Amount based upon the number of workweeks they worked for Defendant during the Class Period.[6] (*See* Exhibit 1 at Section III, Paragraph 77.1.1, Pages 12-23). In addition, each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount based upon the number of workweeks they worked for Defendant during the PAGA Period. (*See*

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[3] Although Plaintiff's Counsel seeks attorneys' fees under the percentage method, Plaintiff's Counsel will also provide the Court with their lodestar information at final approval.

[4] These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual costs incurred during the litigation of this case. Should the actual costs exceed $45,000, Plaintiff will only seek reimbursement of costs up to $45,000. Should the actual costs be lower than $45,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

[5] ILYM will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Agreement, the difference will be added to the Net Settlement Amount for distribution to Participating Class Members.

[6] For Class Members who previously released claims against Defendant during the Class Period, the settlement calculation will be based on the number of workweeks worked after these Class Members signed the releases to the end of their employment in the Class Period or the end of the Class Period, whichever is earlier.

Exhibit 1 at Section III, Paragraph 78.1, Pages 13-14).

**c. Notice to the Class**

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class and PAGA Data. (Exhibit 1 at Section III, Paragraph 81.3, Page 18). Within ten (10) calendar days after receipt of the Class and PAGA Data, the Settlement Administrator will mail the Class Notice to all Class Members and Aggrieved Employees. (Exhibit 1 at Section III, Paragraph 81.3.3, Page 19). After notices are mailed, Class Members will have sixty (60) days to respond to the settlement. (*See* Exhibit 1 at Section I, Paragraph 48, Page 7). Class Members may respond to the settlement by requesting to be excluded from it or objecting to it. Class Members can also file a dispute as to the number of workweeks attributed to them. (*See* Exhibit 1 at Section III, Paragraph 81.5, Pages 20-21; Section III, Paragraph 81.4, Page 20; Section III, Paragraph 81.6, Page 22). If a Class Notice is returned because of an incorrect address, within five (5) calendar days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice. (Exhibit 1 at Section III, Paragraph 81.3.4, Page 19).

**d. Distribution of Funds**

Defendant shall wire or otherwise provide to the Settlement Administrator the GSA no later fifteen (15) calendar days after the Effective Final Settlement Date. (Exhibit 1 at Section I, Paragraph 25, Page 4; *see also* Section III, Paragraph 81.11.1, Page 24). Within ten (10) calendar days after the Settlement Administrator's receipt of the GSA, the Settlement Administrator shall disburse the settlement funds. (Exhibit 1 at Section I, Paragraph 19, Page 3; *see also* Section III, Paragraph 81.11.2, Page 24). Participating Class Members must cash or otherwise deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. (Exhibit 1 at Section III, Paragraph 81.13, Pages 25-26). All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to Legal Aid at Work.[7] (*Id.*).

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[7] Legal Aid at Work is a nonprofit legal services organization that has been assisting low-income, working families for more than 100 years. Legal Aid at Work's Wage Protection Program represents low-wage workers who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of claims

**e. Release of Claims**

In exchange for an Individual Class Payment, Participating Class Members will release claims that were alleged or that could have been reasonably alleged based on the facts pleaded in the operative Class Action Complaint during the Class Period. (*See* Exhibit 1 at Section I, Paragraph 44, Page 6). In addition, in exchange for an Individual PAGA Payment, all Aggrieved Employees will release claims any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act of 2004 that were or could have been reasonably alleged based on the facts pleaded the PAGA Notice during the PAGA Period. (*See* Exhibit 1 at Section I, Paragraph 45, Pages 6-7). In addition, Plaintiff has agreed to a general release of his claims. (*See* Exhibit 1 at Section III, Paragraph 82.1, Page 26).

**f. Class Representative Enhancement Payment**

Plaintiff seeks a payment not to exceed $10,000 in consideration for a general release of all his claims against Defendant and the work he performed in this case. As just noted, Plaintiff has agreed to a general release of his claims against Defendant. This general release is far greater than the release proposed for Class Members. This payment not only compensates Plaintiff for the work he undertook in this case, but also for the claims and potential claims he may have against Defendant that he is releasing. For example, Plaintiff brought this class action lawsuit to seek recourse for other employees instead of filing an individual case on behalf of merely himself.

Since the inception of this case, Plaintiff has put the Class's interests ahead of his own. This is evidenced by the work he has done in this case. For example, Plaintiff worked with his attorneys to respond to written discovery that was propounded on him and provided two sets of amended responses. Plaintiff also had his deposition taken all day in San Francisco, California. In addition, Plaintiff's private records were put at issue in this case. Plaintiff obtained his bank statements from his time working for Defendant and produced them to Defendant. Although Plaintiff was unable to obtain them, Plaintiff took extensive efforts to obtain his phone records. Defendant also attempted to obtain Plaintiff's medical records.

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made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under California wage-and-hour laws.

Moreover, as representative for the absent class members, Plaintiff risked a potential judgment taken against him for attorneys' fees and costs if this matter had not been successfully concluded. Additionally, prospective employers do extensive background checks and have access to court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued an employer and one who has done so. The requested award far from compensates Plaintiff for opportunities he may lose in the future.

**g. Final Judgment**

Notice of the final judgment will be posted on the settlement administrator's website.

## V. ARGUMENT

**a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court**

Rule 3.769 requires court approval for class action settlements.[8] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements. Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.

**b. The Settlement is Fair, Reasonable, and Adequate**

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court

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[8] The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court's grant of preliminary approval is therefore requested.

**i. The Settlement was Reached as a Result of Arm's-Length Negotiations**

The settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been adversarial and non-collusive in nature. At all times, Counsel for the Parties conducted extensive arm's length settlement negotiations with the aid of a mediator until the settlement was reached.

**ii. The Settlement is the Result of Thorough Investigation and Discovery**

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The settlement was only possible following investigation, discovery, and evaluation of Defendant's policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

**iii. Counsel for Both Parties are Experienced in Similar Litigation**

Both Plaintiff's Counsel and Defendant's Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating wage and hour class actions. (Mara Dec. ¶¶ 2-9). Defendant's Counsel practices labor and employment law and have represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class actions.

**iv. The Proposed Settlement is a Reasonable Compromise of Claims**

An understanding of the amount in controversy is an important factor in determining whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id.*

In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." *Kullar, supra,* 168 Cal.App.4th at 133. *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, *supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties' investigation and discovery revealed many reasons to discount claims and agree to this settlement.

**1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation**

The settlement was only possible following significant discovery and an evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant produced for the putative class. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted allowed Plaintiff to evaluate the strengths and weaknesses of his theories of liability. As explained herein, Defendant maintains that the discovery produced demonstrates that it would succeed at both class certification and on the merits.

Although, Plaintiff believes this case is suitable for certification on the claimed bases that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the Class Members, Defendant's counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims. While remaining confident in the strengths of his claims, all of these factors led Plaintiff to discount the following potential damage exposure.

**2. Potential Exposure**

The settlement encompasses approximately 4,237 workweeks.[9] This equates to approximately 19,066 shifts. The average rate of pay is approximately $32.61.

Plaintiff alleges that Defendant failed to provide accurate itemized wage statements. The statute of limitations for Plaintiff's wage statement claim is one year. If Plaintiff were to prevail on this claim, the potential damages would be approximately $112,000. (Mara Dec. ¶ 25). Defendant argues that it lawfully and accurately itemized wage statements. Defendant also asserts that any violation of California Labor Code § 226 was not "knowing and intentional." Defendant further contends that employees cannot show that they have suffered an injury as a result of any potential violation of California Labor Code § 226. Plaintiff had to take Defendant's arguments into consideration in evaluating this claim.

Plaintiff alleges that Defendant failed to provide lawful meal periods because Defendant's time records show meal period violations in approximately 29% of shifts. If Plaintiff were to prevail on this claim, the potential damages would be approximately $180,300. (Mara Dec. ¶ 29). Defendant contends that this amount is too high as it has paid meal period premiums to employees. Defendant asserts that no damages would be attributable to shifts in which a premium has already been paid and the maximum potential damages would be reduced. Defendant also contends that that this amount should be zero because it would be able to rebut the presumption under *Donohue*, in part, by showing it has a lawful meal period policy.

Plaintiff further alleges that Defendant fails to provide net ten-minute rest periods to employees. If Plaintiff were to prevail on this claim, the potential damages would be approximately $621,742. (Mara Dec. ¶ 32). Defendant contends that this amount should be zero because it has a lawful rest period policy and practice. Defendant contends that it provides employees with a full ten-minute rest period and that employees do not have to use rest period time transiting to and

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[9] *See* Exhibit 1 at Section III, Paragraph 72.1, Page 12.

from a suitable rest area. Accordingly, Defendant claims Plaintiff should take nothing on this claim and, if the factfinder agreed, Plaintiff would take nothing. Although remaining confident in his position, Plaintiff had no way of knowing how the factfinder would rule on this issue and a substantial discount had to be given to make settlement possible.

Plaintiff further contends that Defendant requires employees to use their personal cell phones for work related purposes and fails to reimburse employees for this use. If Plaintiff were to prevail on this claim, the potential damages would be approximately $42,560. (Mara Dec. ¶ 35). Defendant contends that employees are not required to use their personal cell phones for business purposes as it provides employees with computers they can use to clock in and out for their shifts. As such, Defendant asserts that there are no damages for this claim. Plaintiff had to consider Defendant's arguments in evaluating the settlement value of this claim.

If Plaintiff were to prevail on his meal and rest period claims, he and the Class Members may also be entitled to waiting time penalties. Plaintiff calculates the potential exposure under this claim as $352,188. (Mara Dec. ¶ 38). If Plaintiff's meal period and rest period claims fail, this claim also fails. There is also a possibility that the factfinder could find that these violations are not willful. If this were to occur, Plaintiff and the Class would receive nothing under this claim. In addition, a good faith dispute that any wages are due will preclude imposition of waiting time penalties. Defendant argues that Plaintiff will not be able to show that any violations were willful. Defendant also contends that there is a good faith dispute about whether any wages are due.

Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. The statute of limitations for PAGA violations go back one year. The potential damages under Plaintiff's PAGA claim are $1,370,100. (Mara Dec. ¶ 40). Defendant contends that Plaintiff would not be allowed to "stack" PAGA penalties. If the Court were to agree with this and only award one PAGA penalty per pay period, Defendant's exposure would be $341,400. (*Id.* at ¶ 41). As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiff and the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. As such, the Court may reduce any PAGA penalty amount awarded to Plaintiff and the Aggrieved Employees.[10] (*Id.* at ¶ 42).

Thus, <u>not taking into account any of its defenses or arguments</u>, Plaintiff estimated that if he were successful in his core claims, Defendant's total exposure would be approximately $956,602 [$112,000 (wage statements) + $180,300 (meal periods) + $621,742 (rest periods) + $42,560 (business reimbursements) = $956,602]. If the fact finder were to side with Defendant on these claims, Plaintiff and the Class Members would also not be entitled to any damages for waiting time penalties or PAGA penalties that are derivative of and dependent on Plaintiff prevailing on his meal and rest period claims. If Plaintiff is successful in his meal and rest period claims, and is able to prove that Defendant's waiting time penalties violations were willful, he may also be entitled to damages for waiting time penalties in the amount of $352,188. Plaintiff and the Aggrieved Employees may also be entitled to PAGA penalties in the between $341,400 and $1,370,100, subject to Court reduction. (Mara Dec. ¶ 43).

Under this exposure, wages comprise approximately 30% of the exposure and penalties comprise up to approximately 70% of the exposure. This split is in line with the tax split allocated to Individual Settlement Shares which is one-third wages and two-thirds non-wages.

### 3. The Settlement Amount of $179,750 is Reasonable

In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the settlement amount of $179,750 – with an average settlement share amount estimated at $234.45 is a reasonable and fair settlement amount. (Mara Dec. ¶ 45). It should be noted that a settlement is not judged solely against what might have been recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo*

[10] The amount allocated to Plaintiff's PAGA claims takes into account the risk that the Court will likely reduce Plaintiff's PAGA exposure for the reasons outlined above.

*Bank* (1990) 220 Cal.App.3d 1117, 1139. "Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*, *supra*, at 250.

**c. Provisional Certification Should be Granted**

Under California law, a class action is appropriate when the class is ascertainable and there is "a well defined community of interest in the questions of law and fact involved affecting the parties to be represented." Cal. Civ. P. Code § 382. It should be noted that while a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of the class certification elements are present.

**d. Notice to the Class Complies with California Rule of Court 3.769(f)**

The proposed Class Notice meets all of the requirements of California Rule of Court 3.769(f). The proposed Class Notice advises the class of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing.

## VI. CONCLUSION

Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class and Class Members, as it is fair, adequate, and reasonable.

**MARA LAW FIRM, PC**

Date: September 19, 2025

Signed:____________________________

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