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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JOSE BARAJAS on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. BENNETT ENTERPRISES, A CALIFORNIA LANDSCAPE CONTRACTING CORPORATION; and DOES 1-100, Defendants.	Case No. 24STCV12791 [*Assigned for All Purposes to the Hon. Carolyn B. Kuhl; Dept. 12*] **PLAINTIFF JOSE BARAJAS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE** Date: March 16, 2026 Time: 10:30 a.m. Complaint Filed: May 21, 2024 Trial Date: None Set

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I. INTRODUCTION

Plaintiff Jose Barajas (hereinafter "Plaintiff" or "Mr. Barajas"), on behalf of himself and the approximately 360-member putative class, respectfully requests that this Court preliminarily approve the Class Action and PAGA Settlement Agreement and Class Notice (hereinafter "Agreement"[1]) entered into between Plaintiff and Defendant Bennett Enterprises (hereinafter "Defendant" or "Bennett") hereinafter Plaintiff and Defendant are collectively referred to as the "Parties"). The Parties' Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary $500,000 Gross Settlement Amount. The proposed Class is comprised of all individuals who currently or formerly worked for Bennett as an hourly non-exempt employee, as a landscaper or in a similar job position, in California, at any time during the period of May 21, 2020, through November 22, 2025.[2]

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 of $500,000 is well within the range of reasonableness. This settlement is estimated to pay Class Members an average payment of approximately $703.71.

The proposed Agreement satisfies all the criteria for preliminary approval under Rule 3.769 of the California Rules of Court. 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 notice of class action settlement[3] (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for final approval of July 20, 2026, or later.

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[1] The Parties' utilized the Los Angeles County Superior Court Model Class Action and PAGA Settlement Agreement and Class Notice. 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. Attached to the Declaration of David Mara, Esq. as Exhibit 2 is a redlined version of the Agreement showing what changes were made to the Model Class Action and PAGA Settlement Agreement and Class Notice.

[2] Exhibit 1 at Paragraph 1.5.

[3] The Class Notice is attached to the Agreement as Exhibit A.

II. BACKGROUND

Defendant provides services to both residential and commercial properties, including maintenance, tree trimming, irrigation, landscape design, and construction. Bennett employs hourly, non-exempt landscapers and/or other workers with similar job designations and titles.

On May 21, 2024, Plaintiff commenced this Action by filing a wage and hour complaint against Bennett. (Mara Dec. ¶ 18). On September 17, 2024, Plaintiff filed a First Amended Complaint, adding a cause of action against Bennett for violations of the PAGA. (Mara Dec. ¶ 20). The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint").

III. INVESTIGATION/LITIGATION HISTORY

a. Discovery and Investigation

After filing, the Parties engaged in both formal and informal discovery. Both Parties propounded and responded to formal written discovery. (Mara Dec. ¶ 21). The Parties also engaged in informal discovery geared towards mediation. In addition, Defendant took Plaintiff's deposition. (Mara Dec. ¶ 22). These discovery efforts led to Defendant producing policy documents that covered employees' employment with Defendant, and time and wage records. Included within these documents were Defendant's wage and hour policies, including its meal and rest period policies. Defendant also produced time and wage records for a 20% random sampling of the Class Members which Plaintiff's Counsel analyzed. The sampling should be reflective of the entire Class as the employees included in it were selected at random. Defendant further produced Plaintiff's personnel file and time and pay records. Plaintiff also requested, and Defendant produced, data surrounding the number of current and former employees, as well as the number of workweeks worked by Class Members during the relevant time period, to establish a potential exposure model in preparation for mediation. From this discovery, Plaintiff and his Counsel were able to analyze Defendant's liability in this action and prepare a realistic damage model. (Mara Dec. ¶ 23).

b. The Parties Agreed to Attend Mediation

The Parties attended an all-day mediation presided over by wage and hour mediator Steven Paul on September 23, 2025. This mediation was ultimately successful. The Parties then met and conferred over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 24; *see also* Exhibit 1 attached thereto).

c. The Parties' Staunchly Conflicting Positions

i. Defendant's Arbitration Agreements

Defendant contends that it has enforceable arbitration agreements that cover some of the class members' employment. Defendant contends that Plaintiff cannot represent these individuals because Plaintiff is dissimilar to these individuals on the basis that Plaintiff did not sign an arbitration agreement. Defendant contends that if litigation were to continue, it would argue at class certification that these individuals should not be included in the class. (Mara Dec. ¶ 25).

Plaintiff asserts that the arbitration agreements Defendant procured after the filing of this Action are misleading and aimed at derailing Plaintiff's class action. Plaintiff contends that not only are employees forced to waive class and PAGA actions, but the agreement applies retroactively. Moreover, Plaintiff asserts that Defendant's agreement does not mention Plaintiff's class action, include the complaint, explain Plaintiff's claims, provide contact information for Plaintiff's counsel, nor does Defendant inform putative class members that they will be unable to participate in Plaintiff's class action by signing the agreement. Plaintiff contends that when defendants engage in such activity, courts routinely take corrective action and invalidate class action releases, opt-outs, and/or arbitration agreements that are obtained from misleading or coercive communications. Should litigation continue, Plaintiff would immediately file a motion for curative action to have these agreements invalidated and set aside. (Mara Dec. ¶ 26).

ii. Recovery Periods

Plaintiff asserts that Defendant fails to follow California Code of Regulations section 3395 Plaintiff contends that Defendant does not provide employees with access to drinking water. In addition, Plaintiff asserts that Defendant does not have a written heat illness prevention plan in both English and the language understood by a majority of the employees that is available to employees at the worksite that contains, at a minimum: (1) Procedures for the provision of water and access to shade; (2) he high heat procedures referred to above; (3) Emergency Response

Procedures; and (4) Acclimatization methods and procedures. Plaintiff further contends that Defendant does not provide cool-down recovery periods to employees when the temperature is greater than 85 degrees. (Mara Dec. ¶ 27(c)).

Defendant asserts that it has a lawful written heat illness prevention plan. Defendant contends that it trained employees on its heat illness prevention plan at safety meetings. Defendant asserts that even Plaintiff signed off on attending a meeting regarding Defendant's heat illness prevention plan. Defendant contends that it provided employees with preventative cool-down recovery periods. Defendant asserts that it provided employees with water bottles and that these water bottles were located in its office and employees could freely take them out on their routes with them. Defendant contends that to resolve this claim, the fact finder would have to ask each employee whether or not they received a written heat illness prevention plan, were provided with water, and received recovery periods. Defendant asserts that this would defeat class certification. (Mara Dec. ¶ 27(d)).

iii. Meal Periods

Plaintiff contends that Defendant does not provide employees with meal periods that conform with California law. Plaintiff contends that, here, the time records show non-compliant meal periods. In these shifts, under *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, Plaintiff contends that it is presumed that meal period violations occurred. (Mara Dec. ¶ 28(c)).

Defendant asserts that its meal period policy is lawful and that it provides employees with meal periods in compliance with California law. 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. Moreover, Defendant contends that employees sign attestations acknowledging that they were provided with lawful meal periods. Defendant contends that this evidence would rebut the presumption under *Donohue v. AMN Services, LLC*. Defendant also 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. This could be due to employees knowingly and voluntarily deciding to skip the meal period or taking a late or short 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 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(d)).

iv. Rest Periods

Plaintiff alleges that employees are not provided with lawful rest periods. Plaintiff alleges that until January 1, 2025, Defendant did not provide employees with a ten-minute rest period for every four hours or major fraction thereof. (Mara Dec. ¶ 29(b)).

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 it provides employees with rest periods within the time periods outlined by California law. Defendant asserts that it trained its foremen to provide rest periods to employees for every four hours or major fraction thereof. 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. (Mara Dec. ¶ 29(c)).

v. Business Reimbursements

Plaintiff asserts that Defendant does not reimburse employees for all business expenses. Plaintiff contends that Defendant requires employees to use their personal cell phones for work related purposes and fails to reimburse employees for this use. In addition, Plaintiff asserts that Defendant requires employees to wear steel toed boots as part of their uniform but fails to either provide drivers with steel toed boots or reimburse drivers for this expense. Plaintiff also asserts that Defendant requires employees to purchase tools necessary to perform their jobs. (Mara Dec. ¶ 30(b)).

Defendant asserts that employers must only reimburse an employee for "necessary expenditures." Cal. Lab. Code § 2802(a). Defendant contends that a plaintiff must show: (1) they incurred expenses; (2) the expenses were *necessary* to discharge their duties; and (3) was not reimbursed. *Alvarado v. Wal-Mart Assoc., Inc*. (C.D. Cal. Nov. 3, 2021) 2021 WL 6104234, *5. Defendant asserts that there is not a necessity to use a personal cell phone. Further, Defendant contends that it is not required to pay for basic work clothing that is usual and generally usable in the occupation, such as steel toed boots. In addition, Defendant contends that it provided employees with all necessary tools required for their jobs. (Mara Dec. ¶ 30(c)).

vi. Wage Statements and Waiting Time Penalties

Plaintiff also pursued claims for failure to provide accurate itemized wage statements and waiting time penalty claims. These claims are derivative of Plaintiff's meal, rest, and recovery period claims. Should Plaintiff's meal, rest, and recovery period claims fail, these claims would also fail. (Mara Dec. ¶ 31(a)).

In addition, Defendant contends that even if Plaintiff were successful in his meal, rest, and recovery 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 wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201 and *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. (Mara Dec. ¶ 31(b)).

IV. TERMS OF THE PROPOSED SETTLEMENT

Under the terms of the settlement, Defendant will create a settlement fund of $500,000.

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a. Deductions from the Settlement

The Parties have agreed that this action be settled and compromised for the non-reversionary total sum of $500,000 (“Gross Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of up to $166,666 (33.33% of the GSA)[4] to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement, and securing Court approval; (b) litigation costs estimated at approximately, and not to exceed, $25,000;[5] (c) a Class Representative Service Payment to the named class representative, Jose Barajas, in a sum not to exceed $10,000 in consideration for prosecuting this class action, serving as Class Representative, work performed, and risks undertaken for the payment of attorneys’ fees and costs in the event he had been unsuccessful in the matter; (d) settlement administration fees and expenses to APEX Class Action Administration (hereinafter “APEX”), estimated not to exceed approximately $20,000;[6] and (e) $25,000 allocated to Plaintiff’s claims under the PAGA. Of this payment, 75%, or $18,750 will be provided to the LWDA, and 25%, or $6,250, will be available for distribution to Aggrieved Employees.[7]

b. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that $253,334 (“Net Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement payment, will be distributed to Participating Class Members.[8] Subject to the terms and conditions

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[4] 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.

[5] 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 $25,000, Plaintiff will only seek reimbursement of costs up to $25,000. Should the actual costs be lower than $25,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

[6] The Parties obtained bids from three settlement administrators – APEX, ILYM Group, Inc., and Simpluris. APEX’s and ILYM Group, Inc.’s were the lowest bids and were within $550 of each other. Based on the Parties’ prior positive experience with APEX, they decided to use APEX for the administration of this matter. Further, APEX 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.

[7] Aggrieved Employees are all individuals who currently or formerly worked for Bennett as an hourly non-exempt employee, as a landscaper or in a similar job position, in California, at any time during the period of May 3, 2023, through November 22, 2025. (Exhibit 1 at Paragraph 1.4).

[8] A Participating Class Member is a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Exhibit 1 at Paragraph 1.35).

of the settlement, each Participating Class Member will receive a portion of the Net Class Settlement Amount called their "Individual Class Payment" based upon the number of workweeks they worked for Defendant during the Class Period. (Exhibit 1 at Paragraph 3.2.4). The Individual Class Payment will be allocated as 40% wages and 60% penalties and interest. (Exhibit 1 at Paragraph 3.2.4.1). In addition, each Aggrieved Employee will receive a will receive a proportionate share of the PAGA Payment that is allocated for distribution to PAGA Aggrieved Employees (i.e., 25% of the PAGA Payment) based upon the number of pay periods they worked for Defendant during the PAGA Period. (Exhibit 1 at Paragraph 3.2.5.1).

c. Notice to the Class

Not later than 15 days after the Court grants preliminary approval, Defendant will deliver the Class Data to the Settlement Administrator. (Exhibit 1 at Paragraph 4.2). No later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to the Agreement as Exhibit A. (Exhibit 1 at Paragraph 7.4.2). The Notices will be mailed in English and Spanish. After notices are mailed, Class Members will have 60 days to respond to the settlement. (Exhibit 1 at Paragraph 1.43). Class Members may respond to the settlement by requesting to be excluded from it, objecting to it, or submitting a dispute as to the number of workweeks attributed to them. (Exhibit 1 at Paragraphs 7.5.2, 7.7.1, 7.6).

d. Distribution of Funds

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (Exhibit 1 at Paragraph 4.3). Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator shall disburse the settlement funds. (Exhibit 1 at Paragraph 4.4). For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member. (Exhibit 1 at Paragraph 4.4.3).

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e. Release of Claims

In exchange for an Individual Class Payment, Participating Class Members will release all claims that were alleged or reasonably could have been alleged based on the Class Period facts stated in the Operative Complaint. (Exhibit 1 at Paragraph 5.2). In addition, all Aggrieved Employees will, in exchange for an Individual PAGA Payment, release all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice submitted by Plaintiff on May 4, 2024. (Exhibit 1 at Paragraph 5.3). Further, Plaintiff has agreed to a general release of his claims. (*See* Exhibit 1 at Paragraph 5.1).

f. Class Representative Service Payment Award

Subject to the Court's approval, Plaintiff shall receive a payment not to exceed $10,000 in consideration for a general release of all his claims against Defendant. The payment shall be made from the GSA. 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, he has put the Class's interests ahead of his own. This payment compensates Plaintiff for the claims that he forwent bringing for the betterment of the Class Members.

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. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been judgments like this entered against class representatives.[9] The risk of payment of Defendant's costs, alone, is a

[9] *See*, e.g. *Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant

sufficient basis for an award of the requested service award.

Additionally, the modern-day work force is mobile, with employees holding several jobs over the span of their career. It is also true that prospective employers in this computer, high-tech age "Google" and/or 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

Pursuant to Cal. Rules of Court, Rule 3.771(b), 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.[10] "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 3.76 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

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prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.,* No. 05-2320, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. Dec. 17, 2007) (a wage and hour misclassification case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of $56,788.).

[10] 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.

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 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, at all times, adversarial and non-collusive in nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm's length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as Exhibit 1. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understands the benefit of the class receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, preparing for and conducting a trial, and/or an appeal that may take several more years to litigate.

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 Parties' Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating unpaid wages, unprovided meal and rest periods, and overtime claims. (Mara Dec. ¶¶ 2-17). Indeed, Plaintiff's Counsel was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.,* which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Mara Dec. ¶ 4). Plaintiff's Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.[11] 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

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[11] The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the final approval motion.

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 proposed 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 as referenced above. 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 central theories of liability, which are predicated on Plaintiff's claims that Defendant failed to provide compliant meal, rest, and recovery periods. As explained herein, Defendant maintains that the discovery produced demonstrates that it would succeed at both in denying 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.[12] While remaining confident in the strengths of his claims, all of these factors led Plaintiff to discount the following maximum potential damage exposure.

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[12] *See, e.g.*, *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc*. (2006) 141 Cal. App. 4th 1422 (affirming denial of certification).

2. Potential Exposure

The settlement encompasses approximately 20,550 workweeks.[13] This equates to approximately 82,200 shifts worked by class members during the Class Period. Employees average rate of pay is approximately $19.93 per hour.

Plaintiff alleges that Defendant does not have a lawful heat illness prevention plan and does not provide employees with recovery periods. Plaintiff contends that the temperatures in Los Angeles, California are, on average, over 80 degrees Fahrenheit 25% of the year. As such, Plaintiff asserts that in approximately 25% of the shifts, employees would have been entitled to recovery periods. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following potential damages: $409,561 (82,200 shifts x 0.25 x $19.93 average hourly rate = $409,561.50). (Mara Dec. ¶ 27(e)). Defendant contends that this amount should be zero because it has a lawful written heat illness prevention plan and provided recovery periods to employees. Defendant contends that it would provide declarations confirming this is the case if litigation were to continue. (Mara Dec. ¶ 27(f)).

In addition, Plaintiff alleges that Defendant failed to provide employees with meal periods in accordance with California law because Defendant's time records show unlawful meal periods. Plaintiff contends that approximately 49% of shifts have a meal period violation. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following potential damages: $802,740 (82,200 shifts x 0.49 x $19.93 = $802,740.54). (Mara Dec. ¶ 28(e)). Defendant also contends that that this amount should be zero because provided meal periods to employees in accordance with California law. Defendant also asserts that employees sign attestations on their timecards that attest to being provided with lawful meal and rest periods. As such, Defendant contends that it can rebut the presumption under *Donohue v. AMN Services, LLC*. (Mara Dec. ¶ 28(f)).

Plaintiff alleges that Defendant failed to provide employees with rest periods in accordance with California law because Plaintiff asserts that employees were not provided with rest periods in accordance with the timeframes outlined by California law. If Plaintiff were to prevail on this

[13] *See* Exhibit 1 at Paragraph 4.1.

claim for the entire class period, Plaintiff and the Class Members would be entitled to the following potential damages: $1,638,246 (82,200 shifts x $19.93 average hourly rate = $1,638,246). (Mara Dec. ¶ 29(d)). Defendant contends that this amount should be zero because it has a lawful rest period policy. Defendant contends that it would provide declarations confirming this is the case if litigation were to continue. In addition, as noted in relation to meal periods, employees sign attestations on their timecards that attest to being provided with lawful meal and rest periods. (Mara Dec. ¶ 29(e)).

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, Plaintiff and the Class Members would be entitled to approximately $396,000 (66 months in the class period x $60 per month x 100 current employees at any one time = $396,000) in damages. Moreover, Plaintiff asserts that Defendant requires employees to wear steel toed boots but fails to reimburse employees for this expense. If Plaintiff were to prevail on this claim, Plaintiff and the Class Members would be entitled to approximately $48,000 (320 employees x $150 = $48,000) in damages. In addition, Plaintiff contends that employees must buy and supply tools. If Plaintiff were to prevail on this claim, Plaintiff and the Class Members would be entitled to approximately $32,000 (320 employees x $100 = $32,000) in damages. (Mara Dec. ¶ 30(d)). Defendant contends that employees are not required to use their personal cell phones for business purposes. Defendant contends that Plaintiffs cannot point to any policy or practice under which employees are necessarily required to use their personal cell phones. Defendant also asserts that it did not have a policy of requiring drivers to wear steel toed boots, but that drivers wore steel toed boots as they are standard clothing that is usual, customary, and common in the industry and can be worn outside of work or for other employers. Defendant contends that it is not required to pay for basic work clothing that is usual and generally usable in the occupation. Defendant also contends that it provides employees with all necessary tools required for their jobs. As such, Defendant asserts that there are no damages for this claim. (Mara Dec. ¶ 30(e)).

If Plaintiff were to prevail on his meal, rest, and/or recovery period claims, Plaintiff may be entitled to penalties for inaccurate wage statements. If Plaintiff were to prevail on this claim, the potential damages would be $141,000 (120 pay periods with an initial violation x $50 = $6,000 plus 1,350 pay periods with a subsequent violation x $100 = $135,000 = $141,000). (Mara Dec. ¶ 31(c)). As these damages are derivative of Plaintiff's meal, rest, and recovery claims, if Plaintiff's unpaid wages, meal period, and rest period claims fail, this claim also would fail. Defendant also contends that Plaintiff would not be able to show that this violation was knowing and intentional. On this basis, Defendant contends that Plaintiff would not be entitled to any damages for unlawful wage statements. (Mara Dec. ¶ 31(d)).

If Plaintiff were to prevail on his meal, rest, and/or recovery claims, he and the Class Members may also be entitled to waiting time penalties. Plaintiff calculates the potential exposure under his waiting time penalties cause of action as $1,068,507 (30 former employees x 7.77 hours per day x 30 days x $19.93 = $1,068,507.09). (Mara Dec. ¶ 31(e)). As these damages are derivative of Plaintiff's meal, rest, and recovery period claims, if these claims fail, this claim also would fail. Defendant also contends that Plaintiff would not be able to show that this violation was willful. On this basis, Defendant contends that Plaintiff would not be entitled to any damages for waiting time penalties. (Mara Dec. ¶ 31(f)).

Plaintiff also seeks PAGA penalties. The statute of limitations for PAGA violations go back one year. The potential damages under Plaintiff's PAGA claim are $361,500.[14] (Mara Dec. ¶ 32(a)). 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 $150,000 ($100 x 1,500 pay periods = $150,000). (Mara Dec. ¶ 32(b)).

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

[14] $100 x 2 PAGA violations (meal periods and rest periods) x 1,500 pay periods = $300,000
$100 x 1 PAGA violation (recovery periods) x 375 pay periods = $37,500
$100 x 2 violations (business expenses and waiting time penalties) x 120 pay periods = $24,000
Total: $361,500

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.[15] (Mara Dec. ¶ 32(c)).

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 $3,326,547 [$1,638,246 (rest period exposure) + $802,740 (meal period exposure) + $409,561 (recovery period exposure) + $476,000 (business reimbursements) = $3,326,547]. If Plaintiff is successful in his meal, rest, and/or recovery claims, he may also be entitled to damages for wage statements and waiting time penalties in the amount of $1,209,507 [$141,000 (wage statements) and $1,068,507 (waiting time penalties) = $1,209,507]. If Plaintiff's claims are successful, he may also be entitled to PAGA penalties in the amount of $361,500. (Mara Dec. ¶ 33).

3. The Settlement Amount of $500,000 is Reasonable

In light of the risks Plaintiff's claims faced, including Defendant's arbitration agreements and Defendant's arguments at class certification and on the merits, Plaintiff and his Counsel believe that the settlement amount of $500,000 – with an average settlement share amount estimated at $703.71 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 34).

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 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; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the

[15] 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. It should be noted that all Aggrieved Employees are also Class Members.

potential recovery does not…render the settlement inadequate or unfair"); *see also In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21, (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorneys' fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2002 through 2006).

c. Provisional Certification Should be Granted

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. State law requirements under California Code of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. 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 these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

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.

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VI. CONCLUSION[16]

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, and one that should ultimately be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also respectfully requests the Court set a final approval hearing date.

Dated: December 22, 2025 **MARA LAW FIRM, PC**

David Mara, Esq.
Jill Vecchi, Esq.
Representing Plaintiff JOSE BARAJAS,
on behalf of himself, all others similarly situated,
and on behalf of the general public.

[16] Attached hereto as Exhibit A is proof of submission of the proposed settlement agreement to the LWDA.

Exhibit A