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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CASSANOVA TIGER on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. GRAVES 6 INC. DBA PREFERRED PLUMBING & DRAIN; AND DOES 1-100, Defendants.	Case No. 24CV081513 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE** Reservation ID: 205166065172 Date: January 13, 2025 Time: 2:30pm Judge: Hon. Somnath Raj Chatterjee Dept: 21

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

Plaintiff Cassanova Tiger ("Plaintiff"), on behalf of himself and the approximately 328-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 Graves 6 Inc. dba Preferred Plumbing & Drain ("Defendant") (collectively, Plaintiff and Defendant are the "Parties"). The Agreement seeks to resolve claims against Defendant in this matter in exchange for a non-reversionary $400,000 Gross Settlement Amount. The proposed Class is comprised of all non-exempt employees of Defendant in the State of California from June 27, 2020 through the date the Court issues an order granting preliminary approval. (**Ex. 1** at 5). 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 $400,000 is well within the range of reasonableness. This settlement is estimated to pay Class Members an average payment of $590.45. The proposed Agreement satisfies all the criteria for preliminary approval. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of 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' Notice of Class Action Settlement[2] (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.

II. BACKGROUND

Defendant provides inspections, repairs, replacements, and installations of residential and commercial plumbing equipment or services in California. To carry out its business, Defendant employs service technicians, like Plaintiff. Plaintiff submitted his Notice of Labor Code Violations to the LWDA on June 25, 2024. On June 27, 2024, Plaintiff filed this class action complaint, alleging various wage and hour violations on behalf of similarly situated employees against Defendant, including: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5)

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

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

knowing and intentional failure to comply with employee wage statement provisions; (6) failure to pay all wages due at the time of termination of employment; (7) failure to reimburse/illegal deductions; (8) failure to adopt a compliant sick pay/paid time off policy; and (9) violation of the Unfair Competition Law.[3] On September 4, 2024, Plaintiff filed a PAGA representative action complaint in Alameda County Superior Court based on the same aforementioned wage and hour violations (Case No. 24CV090091). On February 26, 2025, Plaintiff filed a Second Amended Complaint in the Class Action adding in a cause of action under PAGA. As such, on July 28, 2025, the PAGA Action (Case No. 24CV090091) was dismissed, leaving the Class Action (Case No. 24CV081513) as the lead case.

III. INVESTIGATION AND LITIGATION HISTORY

a. Discovery and Investigation

The Parties conducted significant investigation and discovery of the facts and law. *See* Mara Dec. 10-11. The discovery resulted in the production of hundreds of documents and thousands of lines of data. Defendant produced relevant policy documents that covered Class Members' employment with Defendant, such as employee handbooks and Defendant's wage and hour policies. Defendant also produced a sampling of time and wage records for Class Members. Plaintiff also requested, and Defendant produced, employee data points, such as the number of Class Members and the number of workweeks worked by Class Members during the relevant time period, such that Plaintiff could sufficiently establish the potential exposure. Plaintiff also deposed Defendant's Person Most Qualified on the noticed deposition topics and spoke with dozens of Class Members. From this discovery and data, Plaintiff and his Counsel were able to analyze Defendant's liability and prepare a realistic damage model. Mara Dec. ¶ 10-11.

b. The Parties Agreed to Attend Mediation

The Parties attended an all-day mediation with respected mediator Jill Sperber on February 7, 2025. Though the matter did not settle at that time, the Parties engaged in substantial formal discovery and subsequently agreed to schedule a second mediation with Ms. Sperber on October 13, 2025. The arms-length settlement discussion at this second mediation ultimately resulted in

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[3] A First Amended Complaint was later filed to remove GRAVES 7 INC. dba PREFERRED PLUMBING & DRAIN as a Defendant.

settlement. 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. Mara Dec. ¶ 12.

c. The Parties' Conflicting Positions

i. Unpaid Wages

Plaintiff contends that Defendant consistently and systematically failed to pay Plaintiff and Class Members for all "hours worked."[4] Mara Dec. ¶ 13. Plaintiff asserts that, to carry the necessary tools for the job, class members were required to use a large personal vehicle, like a truck, and that they were unable to use the commute time effectively for their own purposes. Nonetheless, Plaintiff contends that he and other employees were not compensated for the drive time between home and the first and last work location.[5] Mara Dec. ¶ 14. Plaintiff also alleges that Defendant required Class Members to remain on-call at all times they were not assigned to a job, but were similarly not paid for this time.[6] Plaintiff alleges that he and other technicians were expected to be immediately available to respond to job calls if they came in, and that they could disciplined by Defendant if they rejected a call or were not capable of quickly reporting to the job site. Mara Dec. ¶ 15. Further, prior to August 1, 2024, Defendant paid employees either on a piece-rate basis or hourly minimum wage, depending on which resulted in higher compensation.[7] Under California Labor Code section 226.2, employees paid on a piece-rate basis must be paid separately for rest periods and other non-productive time. Plaintiff contends that when they were paid on a piece-rate basis they were not paid for non-productive time such as time driving between jobs and time taking trips to supply vendors. Mara Dec. ¶ 16.

Defendant wholly disputes the assertion that it did not pay Plaintiff and Class Members for all hours worked. Defendant contends that its payment plan required Plaintiff and Class Members

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[4] Hours worked is defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Wage Order 16-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833.

[5] Forced commute in personal vehicles is compensable hours worked under the "control" test "if a service technician was required during the commute to carry a volume of tools and parts that did not 'allow the service technician to use the time effectively for the service technician's own purposes[.]" *Oliver v. Superior Court* (2020) 51 Cal.App.5th 1, 8.

[6] In *Mendiola*, the California Supreme Court reiterated that an employee's standby time may require compensation. *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833

[7] Post-August 1, 2024, Defendant only paid Class Members by the hour.

to accurately track all hours worked, including drive time to/from calls and any non-productive time such as for trips to suppliers. Defendant asserts that its payment of wages was always lawful given Plaintiff and Class Members were guaranteed to make at least minimum wage for all hours worked and merely had the additional opportunity to earn more than minimum wage under the piece-rate payment plan. Further, Defendant purports that Plaintiff and other technicians were free to accept jobs based on their own personal desire to work and that Class Members were entirely free to do whatever they wanted if they were not working on a job. Defendant argues that it can provide declarations from individual employees verifying this. Further Defendant argues that this issue and experiences of "on-call time" is highly individualized and varies significantly amongst Class Members. Therefore, Defendant maintains that Plaintiff's unpaid wages claim could be defeated both at class certification and on the merits. Recent appellate rulings have further complicated the liability picture for Plaintiffs that have found no unlawful borrowing from promised wages where minimum wages were paid for all hours worked. See, for example, *Mora v. C.E. Enterprises, Inc.* (2025) 2025 Cal.App. LEXIS 745. Mara Dec. ¶ 17.

ii. Meal and Rest Periods

Plaintiff also contends that they were not able to take compliant meal and rest breaks. As discussed above, Plaintiff alleges that he and other Class Members had to remain on-call at all times during the workday, including time during meal and rest breaks. Further, in support of the meal period claim, Plaintiff asserts that Defendant failed to record when Class Members started and ended meal periods, relying on Defendant's PMQ testimony. Thus, Plaintiff contends there is a rebuttable presumption that meal periods were not taken in qualifying shifts under Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58.[8] Moreover, Plaintiff claims Defendant's rest period policy is noncompliant because Defendant does not explain that the 10-minute rest break must be a net 10-minutes in a suitable rest area.[9] Mara Dec. ¶ 18. Defendant disputes this and reiterates

[8] *See Donohue, supra,* 11 Cal.5th at 77 ("[i]f time records show missed, short, or delayed meal periods," a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided).

[9] *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 267-68 (noting that none of the time allotted for rest breaks can be consumed by the time it takes to get to a suitable rest area); *see also Bufil v. Dollar Fin. Grp., Inc.* (Cal. App. 2008) 162 Cal. App. 4th 1193 (holding the "onus is on the employer to clearly communicate the authorization and permission [to take rest breaks] to its employees").

that it did not control employees when they were not working for an assigned job and that they were free to do as they pleased. Defendant also asserts that its meal and rest period policies are compliant. Notably, Defendant points out that its meal period policy instructs employees that they have up to 60 minutes for meals, that meal periods must be a minimum of 30 minutes, and that these breaks are completely duty-free. Likewise, Defendant contends that its rest period policies properly instruct employees that they are entitled to 10 minutes of paid, duty-free rest time for every four hours worked, or major thereof. Moreover, Defendant asserts it could get declarations from numerous Class Members verifying they received complaint meal and rest breaks. Mara Dec. ¶ 29.

iii. Reimbursements

Plaintiff claims that Defendant fails to reimburse employees for business expenses. Plaintiff argues that Defendant requires technicians to use their personal vehicles in order to transport tools and supplies to job assignments but does not reimburse them for this mileage.[10] Mara Dec. ¶ 20. Defendant contends that it does reimburse employees for this mileage considering technicians, including Plaintiff, have billed and have been paid for mileage from their home to the first job location and from the last job location to home. Defendant asserts that even if there were instances where this mileage was not paid, that it would not be considered unlawful considering this is standard, personal commute mileage inherent in any job. Therefore, Defendant maintains that Plaintiff's reimbursement claims could be defeated both at class certification and on the merits. Mara Dec. ¶ 21.

iv. 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 underlying claims outlined above. Should Plaintiffs' underlying claims fail, these claims would also fail. Mara Dec. ¶ 22. In addition, Defendant contends that even if Plaintiffs were successful in their underlying claims, they would have to prove Defendant "willfully" failed to pay employees the appropriate wages

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[10] Under Labor Code section 2802, the employer must "indemnify its employees for expenses they necessarily incur in the discharge of their duties[.]" The California Supreme Court in *Gattuso v. Harte-Hanks Shoppers, Inc.*, makes clear that the goal of section 2802 is "to prevent employers from passing on their operating expenses to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 569-71.

and premiums due upon separation of employment. Defendant contends that any failure to pay wages due at the separate of employment was not willful and that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those wages.[11] Defendant also argues that Plaintiffs' underlying claims cannot form the basis of their wage statement claim.[12] Mara Dec. ¶ 23.

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 $400,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of up to $133,333.33 (one-third of the GSA)[13]; (b) actual litigation expenses estimated not to exceed $40,000;[14] (c) a Class Representative Enhancement Payment to the named class representative in a sum not to exceed $5,000; (d) settlement administration fees and expenses to Apex Class Action LLC ("Apex"), estimated not to exceed approximately $8,000;[15] (f) $20,000 allocated to Plaintiff's claims under the PAGA (where 65%, or $13,000 will be provided to the LWDA, and 35%, or $7,000, will be available for distribution to PAGA Class Members); and (f) Defendant's portion of the payroll taxes on the "wage portion" of the settlement. The Net Settlement Amount ("NSA") is the amount remaining after all deductions from the GSA are made.

b. Calculation of Settlement Payments to Class Members

After Court-approved deductions from the GSA, it is estimated that around $193,666.67 less employer and employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members. Participating Class Members will receive a pro-rated share of the NSA, less applicable withholdings, based on the number of workweeks they worked

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[11] *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

[12] *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, (noting employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate).

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

[14] 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 be lower than $15,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

[15] 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.

in California for Defendant during the Class Period. *See* **Ex. 1** at § III (58)(A)(i). In addition, PAGA Class Members will receive a pro-rated share of the Net PAGA Settlement Amount, less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendant during the PAGA Period. **Ex. 1** at § III (59)(A)(i).

c. Notice to the Class

Within 10 business days after entry of the Preliminary Approval Order, Defendant shall send an electronic database with the Class and PAGA Data to the Settlement Administrator. **Ex. 1** at § III(62)(C)(i); *see also* **Ex. 1** at § I (7) and (30). Within 10 business days after receipt of the database, the Settlement Administrator will mail the Class Notice to Class Members in English and with a Spanish translation. **Ex. 1** at § III (60)(C)(iii). After notices are mailed, Class Members have 60 days to respond. **Ex. 1** at § I (40). Class Members may respond to the settlement by requesting to be excluded from it or objecting to it. **Ex. 1** at § III (62)(D) and (E). Class Members can also submit a dispute as to the number of workweeks attributed to them. **Ex. 1** at § III (62)(F).

d. Distribution of Funds

Defendant shall make payment of 50% of the Gross Settlement Amount into an escrow account upon execution of the long form Settlement Agreement. Defendant shall deposit the remaining 50% of the Gross Settlement Amount upon the Court's preliminary approval of the settlement. Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than forty-five (45) days after the Effective Final Settlement Date.. **Ex. 1** at § III (62)(M)(i); *see also* **Ex. 1** at § I (18) and (21). Within ten (10) business days after Defendant funds the entire GSA, the Settlement Administrator shall disburse the settlement funds. **Ex. 1** at § III (62)(M)(ii). Participating Class Members and PAGA Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. All funds associated with checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to Legal Aid at Work. 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. **Ex. 1** at

§ III (62)(O)(ii).

e. Release of Claims

In exchange for a portion of the Net Settlement Amount, Participating Class Members will, upon the Effective Final Settlement Date, release the Released Parties from all claims alleged or that reasonably could have been alleged based on a reasonable interpretation of the facts alleged in the Action, including, without limitation, all minimum wage, overtime, meal and rest break, wage statement, piece rate, waiting time penalty, expense reimbursement, liquidated damages and any other available penalties under the California Labor Code, and related state, municipal, or local law or regulation, and/or related federal law. All Released Class Claims are limited to the Class Period. **Ex. 1** at § I (37).

In addition, The LWDA shall agree to release any and all claims for civil penalties under the PAGA during the PAGA Period, Cal. Lab. Code § 2698, et seq. to the extent such claims are predicated on claims alleged or reasonably could have been alleged based on a reasonable interpretation of the facts in Plaintiff's notice to the LWDA, including, without limitation, all minimum wage, overtime, meal and rest break, wage statement, piece rate, waiting time penalty, expense reimbursement, liquidated damages and any other available penalties under the California Labor Code, and related state, municipal, or local law or regulation, and/or related federal law. All Released PAGA Claims are limited to the PAGA Period. This release is made solely by the California Labor and Workforce Development Agency through its proxy, Plaintiff Cassanova Tiger, and is limited to civil penalties recoverable under Labor Code section 2699. **Ex. 1** at § I (38). Plaintiff has also agreed to a general release of his claims. **Ex. 1** at § III (65).

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.[16] "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

[16] 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.

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 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 mediations, Counsel for the Parties conducted extensive arm's length settlement negotiations until the settlement was reached. 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 Plaintiff's Counsel and Defendant's Counsel are particularly experienced in wage and hour employment law and class actions. Mara Dec. ¶¶1-9; Declaration of Colette Mahon ("Mahon Dec.") at ¶¶ 3-8. 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. 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 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 theories of liability. 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 and practices 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 on Plaintiff's Claims

The settlement encompasses approximately 15,800 workweeks. *See* **Ex. 1** at § III (52)(A). This equates to approximately 79,000 shifts. During this period, the average minimum wage was $15.00 an hour. As discussed, Plaintiff alleges that Defendant fails to pay Class Members for all time worked given they were not paid for drive time to and from the workplace despite having to carry tools, or for the time they were forced to remain on standby during the workday. Plaintiff estimates that there is an average of one hour of drivetime and three hours of standby time per workday. Thus, Defendant's potential exposure under this claim would be $9,480,000 (79,000 shifts x $15.00 average minimum wage rate x 4 hours x 2 for liquidated damages = $9,480,000).

Moreover, Plaintiff contends when employees were previously paid on a piece-rate-basis they were not compensated separately for non-productive time, such as time picking up materials or driving to a job assignment, which Plaintiff estimated took one hour every workday. Thus, Plaintiff estimates an additional $1,494,150 in potential exposure for unpaid wages (9,961 workweeks x $15.000 average minimum wage x 5 hours x 2 for liquidated damages = $1,494,150). Mara Dec. ¶ 24. Defendant contends these amounts are zero because it instructed Class Members to record all hours worked (including drive time to and from work and time making supply runs) and because standby time was completely uncontrolled. Defendant also maintains that its payment of wages was wholly compliant given it guaranteed at least minimum wage for all hours worked. Accordingly, Defendant claims Plaintiff should take nothing on these claims and, if the factfinder agreed, Plaintiff would take nothing. Mara Dec. ¶ 25.

Plaintiff contends that there is a rebuttable presumption under *Donohue* that there was a meal period violation in every qualifying shift given Defendant did not record meal start and end times. Moreover, Plaintiff contends that Defendant failed to provide employees with lawful rest periods by not providing a net 10-minute rest period in a suitable rest area. Assuming a meal or rest period violation in every single shift, Plaintiff estimated the potential exposure at $1,185,000. (79,000 shifts x $15.00 average minimum wage rate = $1,185,000). Mara Dec. ¶ 26. Defendant similarly contends that these claims are worth nothing because it has lawful meal and rest period policies and practices. Notably, Defendant asserts that it permits employees to take a 60-minute meal period and mandates that it be at least 30 minutes, entirely duty-free. Moreover, Defendant contends employees are provided with net 10-minute rest periods. If the factfinder agreed with Defendant, Plaintiff would receive nothing on these claims. Mara Dec. ¶ 27.

Plaintiff also alleges that Defendant failed to reimburse Class Members for mileage incurred driving to the first work location and mileage driving from the last work location despite needing to use personal vehicles in order to carry the required tools. Using the average IRS mileage reimbursement rate throughout the Class Period, Plaintiff estimated the exposure as $2,458,875 (79,000 shifts x $0.6225 average mileage reimbursement rate x 50 miles (25 miles each way) = $2,458,875). Mara Dec. ¶ 28. Defendant asserts that this amount should be zero considering Class

Members, including Plaintiff, received reimbursement for this mileage. Moreover, Defendant asserts that Class Members are not entitled to such reimbursement under the law considering this is merely a standard personal commute between home and the workplace. Mara Dec. ¶ 29.

Plaintiff alleges that Defendant failed to provide accurate itemized wage statements and waiting time penalties. These claims are entirely derivative of Plaintiff's unpaid wages and meal and rest break claims. The statute of limitations for Plaintiff's wage statement claim is one year. If Plaintiff were to prevail on this claim, the maximum potential exposure would be $100,000. ($4000 maximum penalty x 25 current employees = $100,000). Mara Dec. ¶ 30. Plaintiff calculates the potential maximum exposure for his waiting time penalties cause of action as $1,296,000 (288 former employees x 30 days x 10 hours x $15.00 average hourly rate = $1,296,000). Mara Dec. ¶ 31. However, if Plaintiff's underlying unpaid wages and meal and rest break claims failed, these claims would also fail. Defendant also asserts that any violation was not "knowing and intentional" or "willful" and that Class Members cannot show that they have suffered an injury as a result. Further, Defendant similarly contends that good faith dispute existed as to whether wages were owed, which would similarly bar any recovery. Mara Dec. ¶ 32.

Plaintiff also seeks PAGA penalties for the failure to pay all time worked, failure to provide meal periods, failure to provide rest periods, failure to reimburse business expenses, failure to provide accurate wage statements, and failure to pay wages owed twice per month. The potential damages under PAGA for Plaintiff's core claims is thus $1,200,600 ($100 x 6 PAGA violations x 2,001 pay periods = $1,200,600). Mara Dec. ¶ 33. Defendant contends that Plaintiff would not be allowed to "stack" PAGA penalties. If the Court were to agree and only award one PAGA penalty per pay period, Defendant's exposure would be $200,100. Further, 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 PAGA Class Members 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 PAGA Members. Mara Dec. ¶ 34.

Although remaining confident in his position, Plaintiff had no way of knowing how the factfinder would rule on these issues, and a substantial discount had to be given to make settlement possible. Thus, not taking into account any of Defendant's defenses or arguments, Plaintiff estimated that if he were successful in his core claims, Defendant's potential total exposure would be approximately $14,618,025 [$10,974,150 (unpaid time) + $1,185,000 (meal and rest periods) + $2,458,875 (reimbursements) = $14,618,025]. If the fact finder were to side with Defendant on the unpaid wages claim and meal and rest break claims, Plaintiff and the Class Members would also not be entitled to any damages for derivative wage statement, waiting time, or PAGA penalties. If Plaintiff is successful in his unpaid wages and meal and rest break claims and is able to prove that Defendant's wage statement and waiting time penalties violations were "knowing and intentional" and "willful," he may also be entitled to damages for wage statement penalties and waiting time penalties in the amounts of $100,00 and $1,296,000, respectively. Plaintiff and the PAGA Class Members may also be entitled to PAGA penalties in the amount of $1,200,600, subject to Court reduction. Mara Dec. ¶ 35.

3. The Settlement Amount of $400,000 is Reasonable

In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the settlement amount of $400,000 – with an average settlement share amount estimated at $590.45[17] – is a reasonable and fair settlement amount. Mara Dec. ¶¶ 13-36. 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. *E.g. Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ("[c]ompromise 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"); *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 628 ("It is

[17] $193,666.67 Net Settlement Amount / 328 estimated class members = $590.45

well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not…render the settlement inadequate or unfair”).

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.

VI. CONCLUSION

Plaintiff respectfully requests that the proposed settlement be preliminarily approved by the Court, the class be conditionally certified for purposes of settlement only, that the Class Notice be approved, and that a final approval hearing date be set for June 16, 2026.

MARA LAW FIRM, PC

Date: October 15, 2025

Signed: *<u>/s/ Carter Cordura</u>*
Carter Cordura, Esq.
Attorneys for Plaintiff