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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

SHANE HUBER on behalf of himself,
all others similarly situated, and on
behalf of the general public,

Plaintiffs,

v.

LIFE CHIROPRACTIC COLLEGE
WEST INCORPORATED; and DOES 1-
100,

Defendants.

Case No. 24CV100293
[Related to Case No. 25CV108800]

*[Assigned for all purposes to the
Honorable Somnath Raj Chatterjee; Dept. 21]*

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

Date: September 29, 2026
Time: 2:30 p.m.
Reservation ID: 048747675346

Complaint Filed: November 20, 2024
Trial Date: None Set

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I. INTRODUCTION

Plaintiff Shane Huber (“Plaintiff”), on behalf of himself and the approximately 87-member putative class, respectfully requests that this Court preliminarily approve the Joint Stipulation and Settlement Agreement (“Agreement”¹) entered into between Plaintiff and Defendant Life Chiropractic College West, Inc. (“Defendant”) (collectively the “Parties”). The Parties’ Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary \$325,000 Gross Settlement Amount (“GSA”). The proposed Class is comprised of all current and former hourly-paid non-exempt employees of Defendant who worked for Defendant within the State of California at any time from November 20, 2020, to January 17, 2026.²

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 \$325,000 is well within the range of reasonableness. **This settlement is estimated to pay Class Members an average payment of approximately \$1,685.82. In addition, the settlement is estimated to pay Aggrieved Employees an average payment of \$148.94.** The proposed Agreement satisfies all the criteria for preliminary approval under Rule 3.769 of the California Rules of Court. Accordingly, the Court should grant preliminary approval of it.

II. BACKGROUND

Defendant operates a private chiropractic school in Hayward, California.

Plaintiff filed his wage and hour class action complaint on November 20, 2024. (Mara Dec. ¶ 10). In addition, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) in accordance with the Private Attorneys General Act of 2004 (“PAGA”) on November 20, 2024. On January 27, 2025, Plaintiff filed a PAGA action against Defendant. (Mara Dec. ¶ 11). Plaintiff’s class and PAGA cases were related by the Court on March 4, 2025. (Mara Dec. ¶ 12).

III. INVESTIGATION/LITIGATION HISTORY

a. Discovery and Investigation

After filing, the Parties engaged in informal discovery. These discovery efforts led to

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.

² Exhibit 1 at ¶¶ 5, 10.

1 Defendant producing policy documents that covered employees' employment with Defendant,
2 such as employee handbooks, and time and wage records. Included within these documents were
3 Defendant's wage and hour policies, including its meal and rest period policies. Defendant also
4 produced time and wage records for a random sampling of putative class members. From this
5 discovery, Plaintiff and his Counsel were able to analyze Defendant's liability in this action and
6 prepare a realistic damage model. (Mara Dec. ¶ 13).

7 **b. The Parties Agreed to Attend Mediation**

8 The Parties attended an all-day mediation presided over by wage and hour mediator Steve
9 Serratore on November 18, 2025, which resulted in the Agreement. (Mara Dec. ¶ 14).

10 **c. The Parties' Staunchly Conflicting Positions**

11 **i. Arbitration Agreement**

12 Defendant argues at the outset that it has enforceable arbitration agreements that cover a
13 vast majority of Class Members' employment. (Mara Dec. at ¶ 15).

14 Plaintiff asserts that Defendant's arbitration agreements are unenforceable. Plaintiff
15 contends that Defendant's arbitration agreements are substantively unconscionably as they are
16 infinite in duration, lack mutuality, require employees to submit their claims to an employer-
17 controlled dispute resolution process prior to arbitration, and prohibit the shifting of attorneys'
18 fees for prevailing parties. In making these arguments, Plaintiff relies on the case *Cook v.*
19 *University of Southern California* (2024) 102 Cal.App.5th 312, 321-325. Plaintiff also argues that
20 Defendant's arbitration agreements are procedurally unconscionable because they are contracts of
21 adhesion, were unilaterally drafted by Defendants, were presented to employees on a take-it-or-
22 leave-it basis, and were a condition of employment. For these reasons, Plaintiff contends that
23 Defendant's arbitration agreements are unenforceable. (Mara Dec. at ¶ 16).

24 Defendant disagrees and contends that the Court would uphold its agreements. Defendant
25 further asserts that, to the extent the Court were to find any of the provisions in the agreements to
26 be unenforceable, the Court could sever those terms from the arbitration agreements and enforce
27 the remainder of the agreements. Plaintiff contends that severance is not possible as the agreements
28 permeate with unconscionability. (Mara Dec. at ¶ 17).

1 As such, the Parties have a disagreement as to whether Defendant’s arbitration agreements
2 are enforceable. The Parties also have a disagreement about whether Plaintiff can represent
3 employees that signed arbitration agreements when Plaintiff himself did not sign one. If the Court
4 were to find that Plaintiff could not represent these employees, the Class – and therefore the
5 potential damages – would be significantly reduced. (Mara Dec. at ¶ 18).

6 **ii. Rest Periods**

7 Plaintiff alleges that employees are not provided with lawful rest periods. Plaintiff alleges
8 that Defendant requires employees to remain on the premises during rest periods. (Mara Dec. at ¶
9 19). In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
10 Court ruled that the standards applicable to providing meal periods the Court articulated a few
11 years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were equally
12 applicable to the rest period context. Citing *Brinker*, the *Augustus* Court ruled that, like meal
13 periods, “[d]uring required rest periods, employers must relieve their employees of all duties and
14 relinquish any control over how employees spend their break time.” *Augustus*, 2 Cal.5th at 260.
15 At a minimum, to relinquish employer control over how employees spend their break time, the
16 employee must be “free to leave the premises.” *Brinker*, 53 Cal.4th at 1036. As the *Augustus* Court
17 reasoned, the employee must be free to travel five minutes away from the work site so that they
18 can get back within the allotted ten-minute time frame of the break. *Augustus*, 2 Cal.5th at 270.
19 Plaintiff contends that, here, Defendant does not permit employees to leave the premises during
20 rest periods. (Mara Dec. at ¶ 20).

21 Defendant contends that it does not require employees to remain on the premises during rest
22 periods. Defendant argues that to resolve this claim, the factfinder would have to ask whether
23 employees thought they could leave the premises during rest breaks. In addition, Defendant
24 contends that employees did, in fact, leave the premises during rest periods. Defendant asserts that
25 should litigation continue, it would present declarations from employees stating that they were free
26 to leave the premises, and did leave the premises, during rest periods. (Mara Dec. at ¶ 21).

27 Defendant also counters that even if it did tell employees they are to remain on the
28 premises, a point that Defendant does not concede, the practical limitations the ten (10) minutes

1 allotted for rest periods imposes on an employee's movement are what prevent employees from
2 leaving the premises. In other words, the time limitation of only having ten (10) minutes for rest
3 periods prevents off-premises movement during rest periods, not expressly or impliedly telling
4 employees that rest periods are to be taken on the premises. Based on the practical limitations
5 associated with ten (10) minute rest periods, and not Defendant's policies, Defendant contends
6 that its policies are aligned with, and not antagonistic to *Augustus*. (Mara Dec. at ¶ 22).

7 Defendant further asserts that employees are relieved of all work and employer control
8 during rest periods. And, to the extent there is any limitation placed on rest periods, it is something
9 that arises simply out of the fact that ten (10) minutes is a short amount of time. Therefore,
10 Defendant asserts that the limitations placed on employees, if any, are merely inherent to rest
11 periods and not an exertion of employer control. (Mara Dec. at ¶ 23).

12 **iii. Meal Periods**

13 Plaintiff contends that Defendant does not provide employees with meal periods that
14 conform with California law. Plaintiff contends that Defendant fails to provide employees with
15 full thirty-minute meal periods. Plaintiff asserts that employees are required to clock in and out for
16 lunch on time clocks at their work area. Plaintiff contends that this means that the time that is
17 typically paid for – i.e., transiting to and from the break room before the beginning and after the
18 end of meal periods – Defendant takes away from employee meal periods. Plaintiff contends that
19 employees are therefore receiving less free time during their meal periods because their meal
20 period is inclusive of the time it takes to walk to and from the break area. (Mara Dec. at ¶ 24).

21 Defendant asserts that its meal period policy is lawful and that it provides employees with
22 meal periods in compliance with California law. Further, Defendant alleges that if litigation
23 continues it would be able to show that it advised employees of the right to take a meal period in
24 compliance with California law. Defendant contends that it informed employees that their meal
25 period began and ended at a suitable rest area and not their work area. Defendant contends that if
26 litigation were to continue, the Court would have to ask each employee whether they were told
27 their meal period started at a suitable rest area or their workstation. Defendant asserts that this
28 would defeat class certification. Defendant also contends that to the extent an employee was not

1 provided the opportunity to take a legally compliant meal period, they were provided a meal
2 premium. (Mara Dec. at ¶ 25).

3 **iv. Failure to Reimburse for Business Expenses**

4 Plaintiff asserts that Defendant does not reimburse employees for all business expenses.
5 Plaintiff contends that Defendant requires employees to use their personal cell phones for work
6 related purposes and fails to reimburse employees for this use. (Mara Dec. ¶ 26). Defendant asserts
7 that employers must only reimburse an employee for “necessary expenditures.” Cal. Lab. Code §
8 2802(a). Defendant contends that a plaintiff must show: (1) they incurred expenses; (2) the
9 expenses were *necessary* to discharge their duties; and (3) was not reimbursed. *Alvarado v. Wal-*
10 *Mart Assoc., Inc.* (C.D. Cal. Nov. 3, 2021) 2021 WL 6104234, *5. Defendant asserts that there is
11 not a necessity to use a personal cell phone. In addition, Defendant contends that it provided
12 employees with all necessary tools required for their jobs. (Mara Dec. ¶ 27).

13 **v. Wage Statements and Waiting Time Penalties**

14 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
15 waiting time penalty claims. These claims are derivative of Plaintiff’s meal and rest period claims.
16 Should Plaintiff’s meal and rest period claims fail, these claims would also fail. (Mara Dec. ¶ 28).

17 In addition, Defendant contends that even if Plaintiff were successful in his meal and rest
18 claims, he would have to prove Defendant “willfully” failed to pay employees the appropriate
19 wages due upon separation of employment. (Mara Dec. ¶ 29). Defendant contends that any failure
20 to pay wages due at the separation of employment was not willful. (Mara Dec. ¶ 30).

21 Further, Defendant contends that Plaintiff would also have to prove that Defendant
22 “knowingly and intentionally” failed to comply with the wage statement requirements under Labor
23 Code § 226. Defendant maintains that it reasonably, and in good faith believes that it was providing
24 a complete and accurate wage statement in compliance with California law. (Mara Dec. ¶ 31).

25 Defendant also argues that Plaintiff’s meal and rest period claims cannot form the basis of
26 his wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018)
27 22 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor
28 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. (Mara Dec. ¶ 32).

vi. PAGA

Plaintiff also seeks PAGA penalties for the claims outlined above. Because 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. (Mara Dec. ¶ 33). In addition, Defendant maintains that Plaintiff's PAGA claims face manageability concerns consistent with the class certification challenges. Specifically, Defendant contends it has due process rights which would not permit Plaintiff to attempt to generalize violations from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. (Mara Dec. ¶ 34). In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). (Mara Dec. ¶ 35).

IV. TERMS OF THE PROPOSED SETTLEMENT

a. Deductions from the Settlement

The Parties have agreed that this action be settled and compromised for the non-reversionary total sum of \$325,000, which includes, subject to Court approval: (a) attorneys' fees of up to \$108,333.33 (one-third of the GSA);³ (b) litigation costs estimated at approximately, and not to exceed, \$30,000;⁴ (c) a Class Representative Enhancement Payment to the named class representative in a sum not to exceed \$10,000; (d) settlement administration fees and expenses to APEX Class Action Administration (hereinafter "APEX"), estimated not to exceed approximately \$10,000;⁵ and (e) \$20,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 65%, or \$13,000 will be provided to the LWDA, and 35%, or \$7,000, will be available for distribution to Aggrieved Employees.⁶

///

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 \$30,000, Plaintiff will only seek reimbursement of costs up to \$30,000. Should the actual costs be lower than \$30,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

⁵ APEX provided the Parties with the lowest bid for the settlement administration process in this case, meaning that more of the Net Settlement Amount will be available for Participating Class Members. 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.

⁶ Aggrieved Employees are current and former hourly-paid non-exempt employees of Defendant who worked for Defendant within the State of California at any time during the PAGA Period. (Exhibit 1 at ¶ 3). The PAGA Period is November 20, 2023, to January 17, 2026. (Exhibit 1 at ¶ 32).

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

2 After all Court-approved deductions from the GSA, it is estimated that \$146,666.67 (“Net
3 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement
4 payment, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions
5 of the settlement, each Participating Class Member will receive a payment based upon the number
6 of workweeks they worked for Defendant. (Exhibit 1 at ¶ 59.1.1). This payment will be allocated
7 as 20% wages and 80% non-wages. (Exhibit 1 at ¶ 59.2). In addition, each Aggrieved Employee
8 will receive a payment based upon the number of pay periods they worked for Defendant. (Exhibit
9 1 at ¶ 60.1.1). This payment will be treated as 100% penalties. (Exhibit 1 at ¶ 60.2).

10 **c. Notice to the Class**

11 Within fifteen (15) calendar days after service of the Court’s Preliminary Approval Order,
12 Defendant shall deliver to the Class and PAGA Data to the Settlement Administrator. (Exhibit 1
13 at ¶ 63.3.1). Within ten (10) calendar days after receipt of the Class and PAGA Data, the Settlement
14 Administrator will mail the Class Notice to all Class Members using the mailing address
15 information provided by Defendant and the results of the search of the National Change of Address
16 Database. (Exhibit 1 at ¶ 63.3.3). After notices are mailed, Class Members will have sixty (60)
17 days to respond to the settlement. (Exhibit 1 at ¶ 40). Class Members may respond to the settlement
18 by requesting to be excluded from it or objecting to it. (Exhibit 1 at ¶s 63.5 and 63.4). Class
19 Members can also file a dispute regarding the workweeks attributed to them. (Exhibit 1 at ¶ 63.6).

20 **d. Distribution of Funds**

21 Defendant shall wire or otherwise provide to the Settlement Administrator the GSA no
22 later than sixty-five (65) days after service of the Court’s Final Approval Order. (Exhibit 1 at ¶ 21;
23 *see also* ¶ 63.11.1). Within ten (10) calendar days after the Settlement Administrator’s receipt of
24 the GSA, but in no event earlier than the Effective Final Settlement Date, the Settlement
25 Administrator shall disburse the settlement funds. (Exhibit 1 at ¶ 17; *see also* ¶ 63.11.2).
26 Participating Class Members and Aggrieved Employees must cash or deposit their checks within
27 one hundred and eighty (180) calendar days after the checks are mailed to them. All funds
28 _____

⁷ Participating Class Members are all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. (Exhibit 1 at ¶ 34).

1 associated with checks returned as undeliverable and funds associated with those checks remaining
2 un-cashed shall be tendered to Legal Aid at Work.⁸ (Exhibit 1 at ¶ 63.13).

3 **e. Release of Claims**

4 In exchange for an Individual Class Settlement Share payment, Participating Class
5 Members will agree to release claims that were alleged or could have reasonably been alleged
6 factual allegations in Plaintiff's pleadings, along with all related claims and all associated penalties
7 during the Class Period. (Exhibit 1 at ¶ 37). In addition, Aggrieved Employees in exchange for an
8 Individual PAGA Settlement Share payment, will release any and all claims for civil penalties
9 under the PAGA that were or could have been reasonably alleged based on the facts pleaded in the
10 PAGA Notice during the PAGA Period. (Exhibit 1 at ¶ 38). Plaintiff also has agreed to a general
11 release of his claims. (Exhibit 1 at ¶ 55).

12 **f. Class Representative Enhancement Payment**

13 Subject to the Court's approval, Plaintiff shall receive a payment not to exceed \$10,000 in
14 consideration for a general release of all his claims against Defendant. As just noted, Plaintiff has
15 agreed to a general release of his claims against Defendant. This general release is far greater than
16 the release proposed for Class Members. This payment not only compensates Plaintiff for the work
17 he undertook in this case, but also for the claims and potential claims he may have against
18 Defendant that he is releasing. For example, Plaintiff brought this class action lawsuit to seek
19 recourse for other employees instead of filing an individual case on behalf of merely himself. Since
20 the inception of this case, Plaintiff has put the Class's interests ahead of his own.

21 Moreover, as representative for the absent class members, Plaintiff risked a potential
22 judgment taken against him for attorneys' fees and costs if this matter had not been successfully
23 concluded. Case law holds that a losing party is liable for the prevailing party's costs. *See Early v.*
24 *Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). And in some wage and hour actions, such as
25 this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for
26 attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such

27 ⁸ Legal Aid at Work is a nonprofit legal services organization that has been assisting low-income, working families
28 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
made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under
California wage-and-hour laws.

1 costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately
2 liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class
3 Counsel did not meet their obligation to cover those costs. Unfortunately, there have been
4 judgments like this entered against class representatives.⁹ The risk of payment of Defendant's
5 costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are
6 willing to take this risk, and Plaintiff championed a cause on behalf of others with potentially huge
7 monetary risks.

8 Additionally, the modern-day work force is mobile, with employees holding several jobs
9 over the span of their career. It is also true that prospective employers in this computer, high-tech
10 age "Google" and/or do extensive background checks and have access to court databases to see if
11 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff's conduct will not be
12 lost on a prospective employer who has to choose between an applicant who has never sued an
13 employer and one who has done so. The requested award far from compensates Plaintiff for
14 opportunities he may lose in the future.

15 **g. Final Judgment**

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

17 **V. ARGUMENT**

18 **a. Class Action Settlements Are Subject to Court Review and Approval Under 19 the California Rules of Court**

20 Rule 3.769 requires court approval for class action settlements.¹⁰ "Before final approval,
21 the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules
22 of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of
23 class settlements. Courts act within their discretion in approving settlements that are fair, not
24 collusive, and take into account "all the normal perils of litigation as well as the additional
25 uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir.

26 ⁹ See, e.g. *Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant
27 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.
28 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.

1 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price*
2 *Investigators Ass'n* (1981) 452 U.S. 905.

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

4 In deciding whether to approve a proposed class action settlement under Code of Civil
5 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
6 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
7 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
8 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
9 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
10 objectors is small. *Dunk v. Ford Motor Co., supra*, at 1802. As the following shows, all of these
11 elements – with the exception of the percentage of objectors, which cannot be anticipated at this
12 stage of the litigation – bearing on the fairness of the proposed settlement are present here.

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

14 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
15 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
16 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s
17 length settlement negotiations until the settlement was reached. The terms of the settlement are
18 memorialized in the Agreement. While Plaintiff believes in the merits of his case, he also
19 recognizes the inherent risks of litigation and understands the benefit of the Class receiving
20 significant settlement funds immediately as opposed to risking continued litigation.

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

22 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
23 before reaching the proposed settlement, and engaged in sufficient investigation, research and
24 discovery to support the settlement. The settlement was only possible following investigation,
25 discovery, and evaluation of Defendant’s policies and procedures, as well as the data produced for
26 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of
27 liability and potential damages. This litigation has reached the stage where “the Parties certainly
28 have a clear view of the strengths and weaknesses of their cases” sufficient to support the

1 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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

3 Both Plaintiff's Counsel and Defendant's Counsel are particularly experienced in wage and
4 hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating
5 wage and hour class and PAGA actions. (Mara Dec. ¶¶ 2-9; Declaration of Colette Mahon, Esq.
6 ¶¶ 2-5).¹¹ Defendant's Counsel practices labor and employment law and have represented
7 numerous employers in similar types of claims. Accordingly, both Parties' Counsel are
8 experienced in wage and hour employment law and class actions.

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

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

16 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
17 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
18 that of the attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
19 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
20 provided there is a record which allows "an understanding of the amount that is in controversy and
21 the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently,
22 "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
23 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of
24 reasonableness." *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*
25 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties'
26 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

27
28 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.

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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 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 potential damage exposure.

2. Potential Exposure

Class Members worked approximately 20,788 shifts during the Class Period. Employees average hourly rate is approximately \$26.74 per hour.

Plaintiff alleges that Defendant failed to provide employees with lawful meal and rest periods. Plaintiff contends that employees are not provided with duty-free rest periods because Plaintiff contends that employees must stay on the premises during rest periods. In addition, Plaintiff contends that Defendant does not provide full thirty-minute meal periods to employees because employees must use some of their meal period time to get to and from a suitable rest area. If Plaintiff were to prevail on these claims, Plaintiff and the Class Members would be entitled to

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).

1 the potential damages in the amount of \$1,000,076. (Mara Dec. ¶ 36). Defendant contends that
2 these amounts should be zero because it has lawful meal and rest period policies and practices.
3 Defendant contends that employees are relieved of all duties during meal and rest periods and can
4 leave the premises during both of these breaks. Defendant also contends that employees receive
5 full thirty-minute meal periods. Due to this, Defendant asserts that employees are not owed meal
6 or rest period premiums. Accordingly, Defendant claims Plaintiff should take nothing on these
7 claims and, if the factfinder agreed, Plaintiff would take nothing. Although remaining confident in
8 his position, Plaintiff had no way of knowing how the factfinder would rule on this issue, and a
9 substantial discount had to be given to make settlement possible. (Mara Dec. ¶ 37).

10 Plaintiff contends that Defendant requires employees to use their personal cell phones for
11 work related purposes and fails to reimburse employees for this use. If Plaintiff were to prevail on
12 this claim, Plaintiff and the Class Members would be entitled to approximately \$261,000 in
13 damages. (Mara Dec. ¶ 38). Defendant contends that employees are not required to use their
14 personal cell phones for business purposes. Defendant contends that Plaintiff cannot point to any
15 policy or practice under which employees are necessarily required to use their personal cell phones.
16 As such, Defendant asserts that there are no damages for this claim. (Mara Dec. ¶ 39).

17 If Plaintiff were to prevail on his meal and rest period claims, he and the Class Members
18 may also be entitled to wage statement and waiting time penalties. Plaintiff asserts that Defendant
19 failed to provide Plaintiff and the Class Members with accurate itemized wage statements. If
20 Plaintiff were to prevail on his wage statement claim, the potential damages would be
21 approximately \$140,050. (Mara Dec. ¶ 40). Defendant argues that it lawfully and accurately
22 itemized wage statements. Defendant also asserts that any violation of California Labor Code §
23 226 was not “knowing and intentional.” Defendant further contends that employees cannot show
24 that they have suffered an injury as a result of any potential violation of California Labor Code §
25 226. Plaintiff had to take Defendant’s arguments into consideration in evaluating this claim. (Mara
26 Dec. ¶ 41).

27 Plaintiff calculates the potential exposure under his waiting time penalties cause of action
28 as \$64,176. (Mara Dec. ¶ 42). As these damages are derivative of Plaintiff’s meal and rest period

1 claims, if these claims fail, this claim also would fail. Defendant also contends that Plaintiff would
2 not be able to show that this violation was willful. On this basis, Defendant contends that Plaintiff
3 would not be entitled to any damages for waiting time penalties. (Mara Dec. ¶ 43).

4 Plaintiff also seeks PAGA penalties. The potential damages under Plaintiff's PAGA claims
5 are approximately \$569,600. Defendant contends that Plaintiff would not be allowed to "stack"
6 PAGA penalties. If the Court were to agree with this and only award one PAGA penalty per pay
7 period, Defendant's exposure would be \$142,400. (Mara Dec. ¶ 44). As Plaintiff's PAGA claims
8 are based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are
9 subject to the same risks on the merits as Plaintiff's class claims. In addition, the Court may reduce
10 any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court
11 reducing the PAGA penalties awarded to Plaintiff and the PAGA Aggrieved Employees –
12 assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these
13 same individuals may also be receiving money for the same unlawful conduct under the class
14 claims. (Mara Dec. ¶ 45).

15 Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if
16 he were successful in his core claims, Defendant's total exposure would be approximately
17 \$1,465,301. If the fact finder were to side with Defendant on these claims, Plaintiff and the Class
18 Members would not be entitled to any damages for wage statements and waiting time penalties
19 that are derivative of and dependent on Plaintiff prevailing on his meal and rest period claims. If
20 Plaintiff is successful in his claims, Plaintiff and the Aggrieved Employees may also be entitled to
21 PAGA penalties. (Mara Dec. ¶ 46).

22 Plaintiff also had to take Defendant's arbitration agreements into consideration.
23 Defendant's arbitration agreements raised additional risks in proceeding forward with litigation.
24 Plaintiff had to take into consideration the fact that the Court could find that Defendant's
25 arbitration agreements are enforceable. Plaintiff also had to take into consideration the fact that the
26 Court could determine that Plaintiff cannot represent employees that signed arbitration agreements
27 because Plaintiff himself did not sign one. If the Court were to find that Plaintiff could not represent
28 these employees, the Class – and therefore the potential damages – would be significantly reduced.

1 (Mara Dec. at ¶ 47).

2 **3. The Settlement Amount of \$325,000 is Reasonable**

3 In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the
4 settlement amount of \$325,000 – **with an average settlement share amount estimated at**
5 **\$1,685.82** – is a reasonable and fair settlement amount. (Mara Dec. ¶ 48). It should be noted that
6 a settlement is not judged solely against what might have been recovered, had the plaintiff
7 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
8 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney*
9 *v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139. (Mara Dec. ¶ 49).

10 **c. Provisional Certification Should be Granted**

11 It should be noted that while a court must certify a class for settlement purposes if a class
12 has not already been certified, "it is well established that trial courts should use different standards
13 to determine the propriety of a settlement class, as opposed to a litigation class certification.
14 Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals*
15 *Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 citing *Dunk v. Ford Motor Co.* (1996)
16 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiff contends, and Defendant does not dispute for
17 settlement purposes only, that each of these elements are present.

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

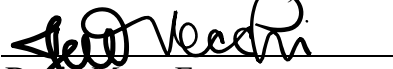
19 The proposed Class Notice meets all of these requirements set forth in California Rule of
20 Court 3.769(f). The Class Notice is attached to the Agreement as Exhibit A.

21 **VI. CONCLUSION**

22 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
23 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be
24 granted final approval.

25 Dated: September 1, 2026

MARA LAW FIRM PC

26 
27 David Mara, Esq.
Jill Vecchi, Esq.

28 Representing Plaintiff SHANE HUBER,
on behalf of himself, all others similarly situated,
and on behalf of the general public