David Mara, Esq. (230498)
dmara@maralawfirm.com
Jill Vecchi, Esq. (299333)
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
3160 Camino Del Rio South, Suite 207
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for ANDREE ALEMAN, on behalf of herself, all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ANDREE ALEMAN on behalf of herself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. RETINA CONSULTANTS, SAN DIEGO, AN INCORPORATED MEDICAL GROUP; RCSD, INC.; and DOES 1-100, Defendants.	Case No. 25CU041637C [*Assigned for all purposes to the Honorable Gregory W. Pollack; Dept. C-71*] **PLAINTIFF ANDREE ALEMAN'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE** Date: December 18, 2026 Time: 9:30 a.m. Date Filed: August 8, 2025 Trial Date: None Set

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. INVESTIGATION AND LITIGATION HISTORY 2

a. Discovery and Investigation 2

b. The Parties Agreed to Attend Mediation 2

c. The Parties' Staunchly Conflicting Positions 2

i. Meal Periods 2

ii. Rest Periods 3

iii. Unpaid Wages – Regular Rate of Pay 3

iv. Business Reimbursements 4

v. Wage Statements and Waiting Time Penalties 4

vi. PAGA Penalties 5

IV. TERMS OF THE SETTLEMENT 6

a. Deductions from the Settlement 6

b. Calculation of Settlement Payments to Class Members 6

c. Notice to the Class 7

d. Distribution of Funds 7

e. Release of Claims 7

V. ARGUMENT 8

a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court 8

b. The Settlement is Fair, Reasonable, and Adequate 8

i. The Settlement was Reached as a Result of Arm's-Length Negotiations 8

ii. The Settlement is the Result of Thorough Investigation and Discovery 9

iii. Counsel for Both Parties are Experienced in Similar Litigation 9

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

1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case

and the Risks and Costs of Further Litigation 10
2. Potential Exposure on Plaintiff's Claims 11
3. The Settlement Amount of $400,000 is Reasonable 13
c. Provisional Certification Should be Granted 14
d. Notice to the Class Complies with California Rule of Court 3.769(f) 14
VI. CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Amaral v. Cintas Corp. No. 2
(2008) 163 Cal.App.4th 1157 5

Beef Industry Antitrust Litigation
(5th Cir. 1979) 607 F. 2d 167 8

Boyd v. Bechtel Corp.
(N.D. Cal. 1979) 485 F. Supp. 610 9

Donohue v. AMN Services, LLC
(2021) 11 Cal.5th 58 ..... 2, 3, 11

Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 1794 ..... 8, 14

Duran v. U.S. Bank National Assn.
(2014) 59 Cal.4th 1 5

Glob. Minerals & Metals Corp. v. Superior Court
(2013) 113 Cal.App.4th 836 14

Green v. Obledo
(1981) 29 Cal.3d 126 8

Hanlon v. Chrysler Corp.
(9th Cir. 1998) 150 F.3d 1011 14

Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n
(1981) 452 U.S. 905 8

Kullar v. Foot Locker Retail, Inc.
(2008) 168 Cal.App.4th 116 10

Maldonado v. Epsilon Plastics, Inc.
(2018) 22 Cal.App.5th 1308 5

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles
(2010) 186 Cal.App.4th 399 10

Rebney v. Wells Fargo Bank
(1990) 220 Cal.App.3d 1117 14
Sav-On v. Superior Court
(2004) 34 Cal.4th 319 ..... 10, 11
Tech-Bilt v. Woodward-Clyde & Associates
(1985) 38 Cal.3d 488 10
Vasquez v. Superior Court
(1971) 4 Cal.3d 800 8
Wershba v. Apple Computers, Inc.
(2001) 91 Cal.App.4th 2 14

I. INTRODUCTION

Plaintiff Andree Aleman ("Plaintiff"), on behalf of herself and the approximately 118-member putative class, respectfully requests that this Court preliminarily approve the Joint Stipulation and Settlement Agreement ("Agreement"[1]) entered into between Plaintiff and Defendants Retina Consultants, San Diego, An Incorporated Medical Group, and RCSD, Inc. ("Defendants" or "Retina Consultants") (Plaintiff and Defendants are the "Parties"). The Parties' Agreement seeks to resolve claims raised against Defendants in this matter in exchange for a non-reversionary $400,000 Gross Settlement Amount ("GSA"). The proposed Class is comprised of all hourly, non-exempt employees of Defendants who worked in California at any time from August 8, 2021, to the date the Court grants preliminary approval. (Exhibit 1 ¶¶ 6, 12).

It is requested that the Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the claims and Defendants' potential liability exposure, this proposed settlement of $400,000 is within the range of reasonableness. **This settlement is estimated to pay Class Members an average payment of approximately $1,666.67.**[2] The proposed Agreement satisfies all the criteria for preliminary approval. 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, as Class Counsel; (5) approval of the Parties' 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.

II. BACKGROUND

Defendants are a retina practice. In order to carry out its business, Defendants employ hourly non-exempt employees, like Plaintiff. Plaintiff worked for Defendant as an Ophthalmic Technician.

Plaintiff submitted her Notice of Labor Code Violations to the LWDA on August 6, 2025.

---

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

[2] The Net Settlement Amount is approximately $196,667. $196,667 divided by 118 equals $1,666.67.

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

On August 8, 20245, Plaintiff filed this wage and hour class action against Defendants. On October 22, 2025, Plaintiff filed a First Amended Complaint alleging a cause of action for Defendants' alleged violations of the Private Attorneys General Act of 2004 ("PAGA"). (Mara Dec. ¶¶ 10-12).

III. INVESTIGATION AND LITIGATION HISTORY

a. Discovery and Investigation

The Parties conducted significant investigation and discovery of the facts and law. Through informal discovery, Defendants produced relevant policy documents that covered employees' employment with Defendants, such as employee handbooks. Included within these documents were Defendants' wage and hour policies, including its meal and rest period policies. Defendant also produced a sampling of time and wage records for Class Members. Plaintiff also requested, and Defendants produced, 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 her Counsel were able to analyze Defendants' liability and prepare a realistic damage model. (Mara Dec. ¶ 13).

b. The Parties Agreed to Attend Mediation

The Parties attended an all-day mediation presided over by wage and hour mediator Michael Dickstein on April 10, 2026. The 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. (Mara Dec. ¶ 14).

c. The Parties' Staunchly Conflicting Positions

i. 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. ¶ 15).

Defendants assert that their meal period policy is lawful and that they provide employees with meal periods in compliance with California law. Further, Defendants allege that if litigation

continues they would be able to show that they advised employees of the right to take a meal period in compliance with California law. Defendants contend 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. Defendants contend that this evidence would rebut the presumption under *Donohue v. AMN Services, LLC*. Defendants also assert 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, Defendants contend the Court or fact finder would have to ask each employee about each instance which would defeat certification as individual issues would predominate. Defendants also assert 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, Defendants contend 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. ¶ 16).

ii. Rest Periods

Plaintiff alleges that employees are not provided with lawful rest periods. Employers have an obligation to provide employees with ten (10) minute rest periods. Here, Plaintiff alleges that Defendant does not provide employees with a "net" ten-minute rest period meaning that employees must use their rest period time to transit to and from a suitable rest area. (Mara Dec. ¶ 21).

Defendants assert that their rest period policy is lawful and that they provide employees with rest periods in compliance with California law. Defendants contend that if litigation were to continue, they would provide declarations from employees stating that they knew they were entitled to rest periods in accordance with California law and that they were able to take full ten-minute rest periods at a suitable rest area. (Mara Dec. ¶ 22).

iii. Unpaid Wages – Regular Rate of Pay

Plaintiff asserts that Defendants do use the proper regular rate of pay when calculating overtime owed to employees. As a result, Plaintiff argues that Defendants paid employees less overtime wages than they were owed. Plaintiff asserts that the regular rate of pay under California

law includes all renumeration for employment paid to the employee. (Mara Dec. ¶ 26).

Plaintiff contends that Defendants pay employees bonuses in addition to hourly pay. Plaintiff asserts that Defendants do not adjust the regular rate of pay when determining the overtime rate owed. Defendants argue that bonuses are entirely discretionary and, therefore, do not need to be included in the regular rate of pay. Thus, the Parties have a dispute about whether Defendants were required to adjust the regular rate of pay due to bonuses paid to employees. (Mara Dec. ¶ 27).

iv. Business Reimbursements

Plaintiff contends that employees are not reimbursed for all business expenses. Plaintiff contends that Defendants require employees to use their personnel cell phones for business purposes, such as to request a replacement for an employee's shift. (Mara Dec. ¶ 30).

Defendants assert that employers must only reimburse an employee for "necessary expenditures." Defendants assert that there is not a necessity to use a personal cell phone nor are employees expected to use their personal cell phones. Defendants contend that it provides all employees access to phones for use while working. Defendants contend that employees could make request for an employee to cover their shift in person during their work shift and did not need to use their personal cell phones for this purpose. (Mara Dec. ¶ 31).

v. 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 period, rest period, and unpaid wages claims. Should Plaintiff's meal period, rest period, and unpaid wages claims fail, these claims would also fail. (Mara Dec. ¶ 34).

In addition, as to the waiting time penalties claims, Defendants argue that Plaintiff would not be able to prove that Defendants "willfully" failed to pay Class Members 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.* Defendants contend that any failure to pay wages due at the separation of employment was not willful. Defendants argue that they 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. (Mara Dec. ¶ 35).

As to Plaintiff's wage statement claim, Defendants assert that any violation of California Labor Code § 226 was not "knowing and intentional." *See* Cal. Lab. Code § 226(e) ("An employee suffering injury as a result of a knowing and intentional failure by an employer" may recover damages") (emphasis added); Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1195 (2008) ("Some statutory penalties are imposed only if an employers' violation was 'willful' or 'knowing.' . . . [S]ection 226, subdivision (e) penalizes an employer's 'knowing and intentional' failure to provide itemized wage statements under section 226, subdivision (a)[.]"). Further, Defendants also argue that Plaintiff's unpaid wage claims cannot form the basis of her wage statement claim. Defendants rely on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that 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. (Mara Dec. ¶ 36).

vi. PAGA Penalties

Plaintiff also seeks PAGA penalties for the claims outlined above. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. Because Plaintiff's PAGA claims are based on the same alleged unlawful conduct as her class claims, Plaintiff's PAGA claims are subject to the same risks on the merits. (Mara Dec. ¶ 41).

In addition, Defendant maintains that Plaintiff's PAGA claims face manageability concerns consistent with the class certification challenges. Specifically, Defendants have 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. ¶ 42).

Further, 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 the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. As such, the Court will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees. (Mara Dec. ¶ 43).

IV. TERMS OF THE 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 GSA, which includes: (a) attorneys' fees of up to $133,333 (one-third of the GSA)[4]; (b) actual litigation expenses estimated not to exceed $30,000;[5] (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 Simpluris estimated not to exceed approximately $10,000;[6] and (e) $25,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 65%, or $16,250 will be provided to the LWDA, and 35%, or $8,750, will be available for distribution to Aggrieved Employees.

b. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that $196,667 ("Net Settlement Amount" or "NSA"), less 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 in California while employed by Defendant during the Class Period. (*See* Exhibit 1 ¶ 65(A)(i)). In addition, Aggrieved Employees will receive a pro-rated share of the NSA,

[4] Although Class Counsel seeks attorneys' fees under the percentage method, Class 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 be lower than $30,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

[6] Simpluris 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.

less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendant during the PAGA Period. (*See* Exhibit 1 ¶ 66(A)(i)).

c. Notice to the Class

Within ten (10) days after entry of the Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. (*See* Exhibit 1 ¶ 70(C)(i)). Within ten (10) days after receipt of the database, the Settlement Administrator will mail the Class Notice to Class Members in English. (*See* Exhibit 1 ¶ Paragraph 70(C)(iii)). After notices are mailed, Class Members have thirty (30) days to respond. (Exhibit 1 ¶ Paragraph 46). Class Members may respond to the settlement by requesting to be excluded from it or objecting to it. (Exhibit 1 ¶¶ 70(E), 70(D)). Class Members can also file a dispute as to the number of workweeks attributed to them. (Exhibit 1 ¶ 70(F)).

d. Distribution of Funds

Defendants shall fully fund the GSA no later fifteen (15) calendar days after the Effective Final Settlement Date. (Exhibit 1 ¶ 23). Within ten (10) calendar days after the Settlement Administrator's receipt of the GSA, the Settlement Administrator shall disburse the settlement funds. (Exhibit 1 ¶ 19). Participating Class Members and Aggrieved Employees 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 the State of California's Unpaid Wage Fund. (Exhibit 1 ¶ 70(N)).

e. Release of Claims

In exchange for a portion of the NSA, Participating Class Members will, as of the date Defendants fund the GSA, release the Released Parties from all claims that were alleged, or reasonably could have been alleged based on the facts in the Operative Complaint and ascertained in the course of the Litigation. (Exhibit 1 ¶ 73). In addition, in exchange for a portion of the PAGA Payment, all Aggrieved Employees will, as of the date Defendants fund the GSA, release all claims for PAGA penalties that were alleged, or reasonably could have been alleged based on the facts in the Operative Complaint, PAGA Complaint, the PAGA Notice, and ascertained in the course of

the Litigation. (Exhibit 1 ¶ 74). In addition, Plaintiff has agreed to a general release of her claims. (Exhibit 1 ¶ 72).

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

b. The Settlement is Fair, Reasonable, and Adequate

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

[7] 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.

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. While Plaintiff believes in the merits of her case, she 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 Defendants' 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 Defendants' Counsel are particularly experienced in wage and hour employment law and class actions. (Mara Dec. ¶¶ 3-9). 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. Defendants' 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 Defendants' relevant policies and procedures, as well as the data that Defendants 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 her theories of liability. As explained herein, Defendants maintain that the discovery produced demonstrates that they 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, Defendants' 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 her 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 10,340 workweeks. (*See* Exhibit 1 ¶ 60(A)). This equates to approximately 41,362 shifts. Employees earned approximately $27.53 per hour on average.

Plaintiff alleges that Defendants failed to provide employees with meal periods in accordance with California law because Defendants' time records show unlawful meal periods. Plaintiff contends that approximately 48% 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: $546,574 (41,362 shifts x 0.48 x $27.53 = $ = $546,574.01). (Mara Dec. ¶ 19). Defendants contend that that this amount should be zero because they provided meal periods to employees in accordance with California law. Defendants contend 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. As such, Defendant contends that it can rebut the presumption under *Donohue v. AMN Services, LLC*. (Mara Dec. ¶ 20).

Plaintiff alleges that Defendants failed to provide employees with rest periods in accordance with California law because Plaintiff asserts that employees were not provided with "net" ten-minute rest periods at a suitable rest area. 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: $1,138,695 (41,362 shifts x $27.53 = $1,138,695.86). (Mara Dec. ¶ 23). Defendants contend that this amount should be zero because they have a lawful rest period policy. Defendants contend that they provided employees with full ten-minute rest periods at a suitable rest area. Defendants assert that employees were told they could take full ten-minute rest periods. Defendants contend that if litigation were to continue, employees' testimony would confirm this. (Mara Dec. ¶ 24).

Further, Plaintiff alleges that Defendants failed to adjust the regular rate of pay to account

for bonuses paid to employees. Based upon the sampling of records, if Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to potential damages in the amount of $34,767.60. (Mara Dec. ¶ 28). Defendants contend that all bonuses paid were discretionary and, on that basis, they do not need to be included in the regular rate of pay. Accordingly, Defendants contend that no additional overtime wages are owed. (Mara Dec. ¶ 29).

Plaintiff further contends that Defendants require employees to use their personal cell phones for work related purposes and fail to reimburse employees for this use. If Plaintiff were to prevail on this claim, Plaintiff and the Class Members would be entitled to the following potential damages: $137,760 (56 months during the relevant time period x $60 x 41 current employees = $137,760). (Mara Dec. ¶ 32). Defendants contend that employees are not required to use their personal cell phones for business purposes. As such, Defendant asserts that there are no damages for this claim. (Mara Dec. ¶ 33).

If Plaintiff were to prevail on her meal period, rest period, and/or unpaid wages claims, Plaintiff may be entitled to penalties for inaccurate wage statements. If Plaintiff were to prevail on this claim, the potential damages would be $296,000 (4 employees x $4,000 maximum penalty = $296,000). (Mara Dec. ¶ 37). As these damages are derivative of Plaintiff's meal period, rest period, and unpaid wages claims, if Plaintiff's meal period, rest period, and/or unpaid wages claims fail, this claim also would fail. Defendants also contend that Plaintiff would not be able to show that this violation was knowing and intentional. On this basis, Defendants contend that Plaintiff would not be entitled to any damages for unlawful wage statements. (Mara Dec. ¶ 38).

If Plaintiff were to prevail on her meal period, rest period, and/or unpaid wages claims, she and the Class Members may also be entitled to waiting time penalties. Plaintiff calculates the potential exposure under her waiting time penalties cause of action as $498,430 (71 former employees x 30 days x 8.5 hours x $27.53 average hourly rate = $498,430.65). (Mara Dec. ¶ 39). As these damages are derivative of Plaintiff's meal period, rest period, and/or unpaid wages claims, if these claims fail, this claim also would fail. Defendants also contend that Plaintiff would not be able to show that this violation was willful. On this basis, Defendants contend that Plaintiff would not be entitled to any damages for waiting time penalties. (Mara Dec. ¶ 40).

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 $1,412,700.[8] (Mara Dec. ¶ 44). Defendants contend 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, Defendants' exposure would be $465,000 ($100 x 4,650 pay periods = $465,000). (Mara Dec. ¶ 45).

As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as her class claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiff and the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. As such, the Court may reduce any PAGA penalty amount awarded to Plaintiff and the Aggrieved Employees. (Mara Dec. ¶ 46).

Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if she were successful in her core claims, Defendant's total exposure would be approximately $1,857,796 [$1,138,695 (rest periods) + $546,574 (meal periods) + $34,767 (unpaid wages) + $137,760 (business reimbursements) = $1,857,796]. If Plaintiff is successful in her meal period, rest period, and/or unpaid wages claims, she may also be entitled to damages for wage statements and waiting time penalties in the amount of $794,430 [$296,000 (wage statements) and $498,430 (waiting time penalties) = $794,430]. If Plaintiff's claims are successful, she may also be entitled to PAGA penalties in the amount of up to $1,412,700.

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

In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the settlement amount of $400,000 – with an average settlement share amount estimated at $1,666.67 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 47). It should be noted that a settlement

[8] $100 x 3 PAGA violations (meal periods, rest periods, and business reimbursements) x 4,650 pay periods = $1,395,000
$100 x 1 PAGA violation (unpaid overtime wages) x 140 pay periods = $14,000
$100 x 1 PAGA violation (waiting time penalties) x 37 pay periods = $3,700
Total: $1,412,700

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. (Mara Dec. ¶ 48).

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 Defendants do 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 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: November 19, 2026

MARA LAW FIRM, PC

David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff ANDREE ALEMAN on behalf of herself, all others similarly situated, and on behalf of the general public