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and on behalf of the general public.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

MARICHU JEFFRIES, on behalf of herself,
all others similarly situated, and on behalf of
the general public,

Plaintiff,

v.

THE MEADOWS AT COUNTRY PLACE,
LLC; and DOES 1-100,

Defendants.

Case No.: 23CV003530

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 26, 2024

Time: 9:00 a.m.

Dept.: 28

Reservation No.: A-003530-001

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL/PROCEDURAL BACKGROUND.....	2
III.	LITIGATION HISTORY/PARTIES CONTENTIONS	3
a.	Discovery and Investigation.....	3
b.	The Parties’ Staunchly Conflicting Positions.....	3
i.	Meal Periods.....	3
ii.	Rest Periods	4
iii.	Unpaid Wages	5
c.	The Parties Agreed to Attend Mediation.....	6
d.	The Terms of the Proposed Settlement	6
i.	Deductions From the Settlement	6
ii.	Calculation of the Settlement Payments to Participating Class Members	7
iii.	Notice to the Class.....	8
iv.	Distribution of Funds.....	8
v.	Release of Claims	9
IV.	ARGUMENT	11
a.	Class Action Settlements are Subject to Court Review and Approval Under the California Rules of Court	11
b.	The Settlement is Fair, Reasonable, and Adequate	11
i.	The Settlement was Reached as a Result of Arm’s Length Negotiations	12
ii.	The Settlement is the Result of Thorough Investigation and Discovery.....	12
iii.	Counsel for Both Parties are Experienced in Similar Litigation	12
iv.	The Proposed Settlement is a Reasonable Compromise of Claims.....	13

1	1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and	
2	the Risks and Costs of Further Litigation.....	14
3	2. Exposure and the Risks for Each Claim	14
4	A. Meal Periods	15
5	B. Rest Periods	15
6	C. Unpaid Wages.....	16
7	D. PAGA.....	16
8	3. The Settlement Amount of \$180,000 is Reasonable.....	18
9	c. Provisional Class Certification Should be Granted	19
10	i. The Proposed Settlement Class is Ascertainable	20
11	ii. The Proposed Settlement Class is Sufficiently Numerous	20
12	iii. The Commonality Requirement is Met	21
13	iv. The Typicality Requirement is Met.....	22
14	v. The Adequacy Requirement is Met.....	22
15	vi. Notice to Class Members Complies with California Rule of Court 3.769(f).....	23
16	V. CONCLUSION	23
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

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Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal. App. 4th 121..... 14

Avila v. Cold Spring Granite Co.

(E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 ... 18

Bell v. Farmers Ins. Exch.

(2004) 115 Cal. App. 4th 715..... 11

Bowles v. Superior Court

(1995) 44 Cal.2d 574..... 20, 21

Boyd v. Bechtel Corp.

(N.D. Cal. 1979) 485 F. Supp. 610 12

Classen v. Weller

(1983) 145 Cal.App.3d 27..... 22

Dunbar v. Albertson's Inc.

(2006) 141 Cal. App. 4th 1422..... 14

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794..... 12, 13, 20

Gay v. Waiters' & Dairy Lunchmen's Union

(N.D. Cal. 1980) 489 F. Supp. 282 20

Gentry v. Superior Court

(2007) 42 Cal.4th 443..... 21

Ghazaryan v. Diva Limousine, Ltd.

(2008) 169 Cal.App.4th 1524..... 21

Glob. Minerals & Metals Corp. v. Superior Court

(2013) 113 Cal.App.4th 836..... 20

Green v. Obledo

(1981) 29 Cal.3d 126..... 11

1	<i>Hanlon v. Chrysler Corp.</i>	
2	(9th Cir. 1998) 150 F.3d 1011.....	19, 21, 22
3	<i>Harris v. Superior Court</i>	
4	(2007) 154 Cal. App. 4th 164.....	14
5	<i>Hebbard v. Colgrove</i>	
6	(1972) 28 Cal.App.3d 1017.....	21
7	<i>Henderson v. Ready to Roll Transportation, Inc.</i>	
8	(2014) 228 Cal.App.4th 1213.....	20
9	<i>Ikonen v. Hartz Mountain Corp.</i>	
10	(S.D. Cal. 1988) 122 F.R.D. 258.....	21
11	<i>In re Beef Industry Antitrust Litigation</i>	
12	(5th Cir. 1979) 607 F. 2d 167.....	11
13	<i>In re Cellphone Fee Termination Cases</i>	
14	(2010) 186 Cal. App. 4th 1380.....	11
15	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
16	(1981) 452 U.S. 905	11
17	<i>Iskanian v. CLS Transp. Los Angeles, LLC</i>	
18	(2014) 59 Cal.4th 348.....	21
19	<i>Kullar v. Foot Locker Retail, Inc.</i>	
20	(2008) 168 Cal.App.4th 116.....	13, 14
21	<i>Linder v. Thrifty Oil Co.</i>	
22	(2003) 23 Cal.4th 429.....	22
23	<i>McGhee v. Bank of America</i>	
24	(1976) 70 Cal.App.3d 442.....	22
25	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
26	(2010) 186 Cal.App.4th 399.....	13
27	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
28	(9th Cir. 1982) 688 F.2d 615.....	19

1	<i>Rebney v. Wells Fargo Bank</i>	
2	(1990) 220 Cal.App.3d 1117.....	19
3	<i>Romero v. Producers Dairy Foods</i>	
4	(E.D. Cal. 2006) 235 F.R.D. 474.....	20
5	<i>Rose v City of Hayward</i>	
6	(1981) 126 Cal.App.3d 926.....	20
7	<i>Sav-On v. Superior Court</i>	
8	(2004) 34 Cal.4th 319.....	14, 21
9	<i>See’s Candy, Inc. v. Superior Court</i>	
10	(2012) 210 Cal. App. 4th. 889.....	5
11	<i>Sevidal v. Target Corp.</i>	
12	(2010) 189 Cal.App.4th 905.....	20
13	<i>Tech-Bilt v. Woodward-Clyde & Associates</i>	
14	(1985) 38 Cal.3d 488.....	14
15	<i>Thurman v. Bayshore Transit Management, Inc. (“Thurman”)</i>	
16	(2012) 203 Cal. App. 4th 1112.....	17
17	<i>Vasquez v. Superior Court</i>	
18	(1971) 4 Cal.3d 800.....	11
19	<i>Walsh v. IKON Solutions, Inc.</i>	
20	(2007) 148 Cal. App. 4th 1440.....	14
21	<i>Wehner v. Syntex Corp.</i>	
22	(N.D. Cal. 1987) 117 F.R.D. 641	22
23	<i>Wershba v. Apple Computers, Inc.</i>	
24	(2001) 91 Cal.App.4th 2.....	19, 20
25	Statutes	
26	California Civil Procedure Code § 382.....	19
27	California Labor Code § 2699(e)(2)	18
28	California Labor Code § 2699(f)(2).....	16, 17

1	California Labor Code § 1174	9, 10
2	California Labor Code § 1194	9, 10
3	California Labor Code § 1194.2	9
4	California Labor Code § 1197	9, 10
5	California Labor Code § 201	9, 10
6	California Labor Code § 202	9, 10
7	California Labor Code § 203	9, 10, 18
8	California Labor Code § 204	9, 10
9	California Labor Code § 226	9, 10, 18
10	California Labor Code § 226.7	9, 10
11	California Labor Code § 510	9, 10
12	California Labor Code § 512	9, 10
13	California Labor Code § 1194.2	10, 18
14	California Labor Code § 558(a).....	18
15	California Rule of Court Rule 3.769.....	1, 11
16	California Rules of Court Rule 3.769(g).....	11
17	Code of Civil Procedure § 877.6.....	13
18	Federal Rule Civil Procedure 23.....	11, 19
19	Federal Rule Civil Procedure 23(a)	19
20	Other Authorities	
21	DLSE Opn. Letter No. 1988.01.05 (Jan. 5, 1988)	4
22	DLSE Opn. Letter No. 1996.07.12 (July 12, 1996).....	4
23	Manual for Complex Litigation § 21.62 n.971	11
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25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Marichu Jeffries (“Plaintiff”), on behalf of herself and the approximately 75-member
3 putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and
4 Settlement Agreement¹ (“Settlement Agreement”) entered into between Plaintiff and Defendant The
5 Meadows at Country Place, LLC (“Defendant”) (Plaintiff and Defendant are collectively referred to
6 as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against Defendant
7 in this matter in exchange for a non-reversionary \$180,000 Gross Settlement Amount (“GSA”). The
8 proposed class is comprised of current and former non-exempt employees who worked for Defendant
9 in California during the Class Period (“Class Members”). The Class Period is the time period
10 beginning on from June 21, 2019, through April 20, 2024.

11 It is requested that the Court grant preliminary approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this proposed
13 settlement of \$180,000 – **which is estimated to pay class members an average settlement share of**
14 **approximately \$1,040**² – is well within the range of reasonableness. Moreover, the proposed
15 Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California
16 Rules of Court.

17 As the following sections show, Class Counsel are convinced that the proposed settlement is in
18 the best interests of the Class based on the negotiations and a detailed knowledge of the issues present
19 in this action. The length and risks of trial and perils of litigation that affect the value of the claims
20 were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class
21 certification, the difficulties of complex litigation, the lengthy process of establishing specific damages
22 and various possible delays and appeals, were also carefully considered by Class Counsel in arriving
23 at the proposed settlement, including the very real possibility that due to Defendant’s financial
24 condition, it would be financially insolvent before a judgment could be collected on. The Settlement
25 Agreement was the product of an all-day mediation with well-regarded and experienced mediator
26 Steve Serratore and was the product of non-collusive, arm’s-length negotiations by informed counsel

27 _____
28 ¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as **Exhibit 1**.

² \$78,000 NSA / 75 class members = \$1,040 average payout per Class Member.

1 and parties. The settlement is fair, reasonable, and adequate to all. Accordingly, Plaintiff seeks: (1)
2 preliminary approval of the terms of the Settlement Agreement; (2) provisional certification of the
3 Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC as
4 Class Counsel; (5) approval of the Parties' proposed notice of class action settlement³ (referred to
5 herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and
6 (6) set a hearing date for final approval.

7 II. FACTUAL/PROCEDURAL BACKGROUND

8 Defendant operates a retirement and assisted living facility. In order to carry out its business,
9 Defendant employs hourly non-exempt employees, like Plaintiff. Mara Dec. ¶ 9.

10 On June 12, 2023, Plaintiff sent notice to the LWDA of her intent to pursue various wage and
11 hour claims against Defendant on behalf of similarly situated aggrieved employees.⁴ Shortly
12 thereafter, Plaintiff filed a putative class action complaint on June 21, 2023, against Defendant in the
13 Sacramento County Superior Court, Case No. 23CV003530, alleging causes of action for: (1) Failure
14 to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal
15 Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to
16 Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at
17 the Time of Termination of Employment; and (7) Violation of Unfair Competition Law. On or around
18 October 10, 2023, Plaintiff filed a First Amended Complaint, alleging an additional cause of action
19 for identical violations of the California Labor Code and seeking civil penalties under the Private
20 Attorneys General Act ("PAGA"). Mara Dec. ¶ 10.

21 Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing
22 of any kind associated with the claims alleged in this action, and further deny that, for any purpose
23 other than settling this action, this matter is appropriate for class treatment. Defendant further contends
24 that they have complied with all applicable California laws, the California Labor Code, the applicable
25 California Wage Order(s), and the Unfair Competition Law. Defendant finally contends that, if this
26 matter were to be litigated further, they would have strong defenses to oppose class certification and
27 succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶ 11.

28 ³ The Class Notice is attached to the Settlement Agreement as **Exhibit A**.

⁴ Plaintiff's notice to the LWDA dated June 12, 2023 is attached to the Mara Dec. as **Exhibit 3**.

III. LITIGATION HISTORY/PARTIES CONTENTIONS

a. Discovery and Investigation

Through discovery, Plaintiff sought numerous documents and substantial amounts of data that were needed to evaluate the case. These documents included requests for time and wage records for the Class, employee handbooks, policies, and practices in place during the class period, as well as data surrounding the number of current and former employees. Mara Dec. ¶ 12.

This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the production of over one thousand, documents, including Defendant's employee handbooks, policies, and practices, and a sampling of wage and time records for Plaintiff and Class Members. Using the time and wage records for the Class provided and the data surrounding the number of current and former employees, Plaintiff and her expert were able to establish a potential exposure model in preparation for mediation. Mara Dec. ¶ 13.

b. The Parties' Staunchly Conflicting Positions

i. Meal Periods

Based upon the discovery conducted, Plaintiff contends – and Defendant denies – that Defendant fails to provide Class Members with lawful meal periods. Under California Labor Code § 512(a), “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” Cal. Lab. Code § 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.

The California Supreme Court in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58 has determined that “[i]f an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided.” *Donohue*, 11 Cal.5th at 74 (citing *Brinker*, 53 Cal.4th at 1052–1053 (conc. opn. of Werdegar, J.)). This presumption does not “only [apply] to records showing missed meal periods,” as “the presumption applies to records showing short and delayed meal periods as well.” *Id.* at 76.

1 Plaintiff contends that, here, the time records Defendant maintains for class members evidence
2 a significant amount of non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends
3 that it is presumed that meal period violations occurred, and argues that Defendant will be unable to
4 provide sufficient evidence to rebut this presumption. Mara Dec. ¶ 14.

5 Defendant argues its meal period policy is facially lawful, that it provides employees with meal
6 periods in compliance with California law, and that Defendant would be able to provide declarations
7 from employees stating that they were able to take compliant meal periods without any interference
8 from Defendant. As such, any records reflecting non-complaint meal periods would be insufficient to
9 demonstrate any purported violations, and Defendant would be able rebut the presumption under
10 *Donohue v. AMN Services, LLC* for meal periods and defeat Plaintiff's claim both at class certification
11 and on the merits. Mara Dec. ¶ 15.

12 ii. Rest Periods

13 Plaintiff further contends that Defendant fails to provide employees with lawful rest periods.
14 Per the California Supreme Court in *Brinker*, the IWC wage order's requirements for providing a meal
15 period is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) **is free to leave the**
16 **premises**, and (3) is relieved of all duty for the entire period. *Brinker*, 53 Cal.4th at 1036 (citing DLSE
17 Opn. Letter No. 1988.01.05 (Jan. 5, 1988) p. 1; DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p.
18 1 (emphasis added)). In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California
19 Supreme Court determined that an employer's obligation for rest periods follow that of the
20 requirements for meal periods laid out by *Brinker*:

21 It would be difficult to cast aside section 226.7's parallel treatment
22 of meal periods and rest periods and conclude that employers had completely
23 distinct obligations when providing meal and rest periods. What makes sense
24 instead is to infer that employers' responsibilities are the same for meal and
25 rest periods—an inference that also reflects the protective purpose of both.
26 *Augustus*, 2 Cal.5th 257, 265. Thus, as an employer must permit the employee to leave premises for
27 meal periods, they must do the same for rest periods.

28 Plaintiff contends that Defendant fails to permit employees to leave the premises for rest
periods and use the time effectively for their own purposes free from employer control. Employees
are thereby – as a matter of policy and practice – prevented from using all their break time free of

1 employer control for off-premises pursuits. For this reason, Defendant does not relinquish all control
2 over employees during their rest periods in violation of California law. Mara Dec. ¶ 16.

3 Defendant denies that employees were prevented from leaving the premises, contends that
4 employees are not under its control and command during rest periods, and contends that employees
5 are provided with duty-free breaks in which they can choose to do whatever they want. Defendant also
6 disagrees with Plaintiff's interpretation of *Augustus*, claiming the California Supreme Court clearly
7 states that employees ordinarily have to remain on site or nearby "during a rest period [because] an
8 employee generally can travel at most five minutes from a work post before returning to make it back
9 on time," and such a "constraint, which is of course common to all rest periods, is not sufficient to
10 establish employer control." *Augustus*, 2 Cal.5th at 270. Further, Defendant claims that numerous
11 employees did, in fact, leave the premises for rest periods, and as such, Plaintiff could not bring this
12 claim on a classwide basis, as individualized issues would predominate. Mara Dec. ¶ 17.

13 **iii. Unpaid Wages**

14 Plaintiff contends that the time and wage records produced by Defendant demonstrate that
15 Defendant operates under an unlawful rounding policy, resulting in employees being systematically
16 underpaid the wages owed to them. In California, rounding policies are only permissible if the
17 rounding policy is "fair and neutral on its face and 'it is used in such a manner that it will not result,
18 over a period of time, in failure to compensate the employees properly for all the time they have
19 actually worked.'" *See's Candy, Inc. v. Superior Court* (2012) 210 Cal. App. 4th. 889, 907.

20 Here, Defendant has an unlawful rounding policy that is not fair and neutral in practice.
21 Defendant's rounding policy results in employees systematically being undercompensated. An
22 analysis of the sampling of time records reveals that the majority of employees were underpaid by the
23 rounding policy by several minutes across a significant number of shifts. Mara Dec. ¶ 18.

24 Defendant argues that Plaintiff's analysis only focuses on the shifts in which employees are
25 underpaid and ignores the instances in which an employee's compensation is neutral or is being
26 overcompensated as a result of the rounding policy. Defendant contends that when the records are
27 considered as a whole, the rounding policy is indisputably fair, neutral, and properly compensates
28 employees over time for all hours worked in compliance with California law. Mara Dec. ¶ 19.

As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiff's claims.

c. The Parties Agreed to Attend Mediation

The Parties agreed to attend mediation with mediator Steve Serratore on February 20, 2024. After a full day of mediation, a mediator's proposal was issued, which the Parties ultimately accepted. Since then, the Parties have met and conferred regarding all the terms of the settlement and finalized their agreement in the Parties' Settlement Agreement. The Parties seek preliminary approval of the Settlement Agreement in the instant motion. Mara Dec. ¶ 20; **Exhibit 1**.

d. The Terms of the Proposed Settlement

Under the terms of the proposed settlement, Defendant will create a settlement fund of \$180,000.

i. 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 \$180,000, which includes, subject to Court approval: (a) attorneys' fees of up to \$60,000 (one-third of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) litigation expenses estimated not to exceed, \$30,000;⁵ (c) an enhancement payment to the named class representative, Marichu Jeffries, in a sum not to exceed \$2,500 in consideration for agreeing to a general release of her claims against Defendant which is broader than that of other class members, and in recognition of their efforts in prosecuting their actions; (d) claims administration fees and expenses to Apex Class Action LLC (hereinafter "Apex"), estimated not to exceed approximately \$7,500;⁶ and (e) PAGA

⁵ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed \$30,000, Plaintiff will only seek reimbursement of costs up to \$30,000. Prior to filing this motion, Class Counsel had incurred \$26,262.98 in litigation expenses, and estimates incurring approximately \$173.70 in future costs. *See* "Costs Summary" attached to the Mara Dec. as **Exhibit 2**.

⁶ 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 Settlement Agreement, the difference will be added to the Net Settlement Amount for distribution to Participating Class Members.

1 payment of \$2,000 allocated to Plaintiff's PAGA claims.

2 **ii. Calculation of the Settlement Payments to Participating Class Members**

3 After all Court-approved deductions from the GSA, it is estimated that \$78,000 ("Net
4 Settlement Amount" or "NSA"), less all applicable employee payroll taxes⁷, will be distributed to each
5 Participating Class Member.⁸ Subject to the terms and conditions of the settlement, the Settlement
6 Administrator will calculate and issue Individual Class Settlement Shares based on the following
7 formula:

8 Each Participating Class Member will receive a proportionate share of the Net
9 Settlement Amount that is equal to (i) the number of weeks he or she worked for
10 Defendant, based on the Class Data provided by Defendant, divided by (ii) the total
11 number of weeks worked by all Participating Class Members during the Class Period
12 based on the same Class Data, which is then multiplied by the Net Settlement Amount.
13 One day worked in a given week for Defendant will be credited as a work week for
14 purposes of this calculation. Therefore, the value of each Class Member's Individual
15 Settlement Share ties directly to the amount of weeks that he or she worked for
16 Defendant in California. **Exhibit 1** attached to the Mara Dec. at Section III (58)(A)(i).

17 Furthermore, the Settlement allocates \$2,000 in consideration for the settlement of Plaintiff's
18 PAGA claims, which is to be distributed separately from the NSA. Settlement Class Members who
19 performed work for Defendant from June 12, 2022, through April 20, 2024 ("PAGA Period") are also
20 deemed "Aggrieved Employees" and able to recover their share of the civil penalties under the
21 settlement. 75% of this \$2,000, or \$1,500, will be paid to the LWDA, while the remaining 25%, or
22 \$500, will be distributed to the Aggrieved Employees. The Settlement Administrator will calculate
23 and issue Individual PAGA Settlement Shares based on pay periods, similar to the class payments, but
24 only for the PAGA Period of June 12, 2022, through April 20, 2024. **Exhibit 1** attached to the Mara
25 Dec. at Section III (59)(A)(i).

26 The precise number of compensable weeks worked per class member will not be known until
27 the administrator tabulates them, following preliminary approval. Under no circumstances will any
28 portion of the \$180,000 settlement revert to Defendant and one hundred percent (100%) of the NSA

⁷ The employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages shall be paid by Defendant separately and in addition to the GSA. **Exhibit 1** attached to the Mara Dec. at Section I (19).

⁸ Participating Class Members are Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. **Exhibit 1** attached to the Mara Dec. at Section I (34).

1 is available for Class Members to claim.

2 The Individual Class Settlement Shares will be divided into a “wage portion” to compensate
3 Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate
4 Participating Class Members for alleged interest and penalties. Participating Class Members’
5 individual settlement shares will be apportioned as 10% wages, 45% penalties, and 45% interest. The
6 Individual PAGA Settlement Shares will be apportioned as one-hundred percent (100%) penalties.

7 **iii. Notice to the Class**

8 Upon entry of the order of the Court granting preliminary approval of this Agreement,
9 Defendant shall provide the Settlement Administrator with a list in Excel spreadsheet format
10 containing the name and last known address, telephone number, and social security number of each
11 Class Member within thirty (30) days for purposes of mailing the Notice of Class Action Settlement
12 to the Settlement Class members. Upon receipt of the class data, the Settlement Administrator will
13 perform a search based on the National Change of Address Database to update and correct any known
14 or identifiable address changes. Within ten (10) business days of receipt of the class data, the
15 Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Class
16 Members via regular First-Class U.S. Mail. Class Members shall have sixty (60) days after the Class
17 Notices are mailed to respond by submitting a challenge to the number of workweeks attributed to
18 them, submitting an objection, or requesting to be excluded from the Settlement Agreement.

19 If a Class Notice is returned because of an incorrect address, within five (5) business days from
20 receipt of the returned notice, the Settlement Administrator will conduct a search for a more current
21 address for the Class Member and re-mail the notice. The Settlement Administrator will use the
22 National Change of Address Database and skip traces to attempt to find the current address. Class
23 Members to whom notices are re-mailed after having been returned to the Settlement Administrator
24 shall have an additional fifteen (15) calendar days beyond the Response Deadline to dispute the
25 number of work weeks worked, opt out of the Settlement, or object to the Settlement.

26 **iv. Distribution of Funds**

27 No later than fifteen (15) business days after the Effective Final Settlement Date⁹, Defendant

28 ⁹ “Effective Final Settlement Date” of the Settlement means when the final approval of the settlement
can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the

1 shall provide the GSA to the Settlement Administrator to fund the Settlement and the employer's share
2 of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages.
3 Not later than ten (10) business days after receiving the funds from Defendant, the Settlement
4 Administrator shall disburse: (1) the Individual Settlement Shares to each Class Member and
5 Aggrieved Employee; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys'
6 fees and costs, as approved by the Court; (3) the Enhancement Payment paid to the Class
7 Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and
8 (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court.

9 Class Members must cash or deposit their Individual Settlement Payment checks within one
10 hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not
11 redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement
12 Administrator will transmit the funds to Legal Aid at Work. Legal Aid at Work is a nonprofit legal
13 services organization that has been assisting low-income, working families for more than 100 years.
14 Legal Aid at Work's Wage Protection Program represents low wage workers who are the victims of
15 wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of
16 claims made in wage-and-hour class actions brought by workers under the federal Fair Labor
17 Standards Act and under California wage-and-hour laws.

18 **v. Release of Claims**

19 On the date in which Defendant funds the settlement, the Class Representative and the Class
20 Members will release the Released Class Claims:

21 All claims that were asserted in the Action, or that arise from or could have been
22 asserted based on any of the facts, circumstances, transactions, events, occurrences,
23 acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's
24 Complaint, regardless of whether such claims arise under federal, state and/or local
25 law, statute, ordinance, regulation, common law, or other source of law, during the
26 Class Period. This release specifically includes, but are not limited to Labor Code §§
27 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and the related
28 IWC Wage Orders and Business & Professions Code §§ 17200, et seq., and include
claims based on alleged violations of these Labor Code and Wage Order provisions)
and all other claims, such as those under the California Labor Code, Wage Orders,
regulations, and/or other provisions of law, that could have been pleaded based on the

court grants final approval of the settlement, the date the court enters judgment granting final approval
of the settlement.

1 facts asserted in the Action, including: (1) failure to pay all straight time wages; (2)
2 failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest
3 breaks; (5) failure to provide accurate itemized wage statements; (6) failure to timely
4 pay employees upon separation or discharge; (7) all related violations of California's
unfair competition law; and (8) interest, fees, and costs. **Exhibit 1** attached to the Mara
Dec. at Section I (37).

5 On the date in which Defendant funds the settlement, Plaintiff, or such other designee who has
6 properly exhausted administrative requirements, acting in the capacity of a representative of the State
7 of California, and on behalf of the group of Aggrieved Employees, will release the Released PAGA
8 Claims:

9 [A]ny and all claims for civil penalties that could have been asserted by the Labor
10 Commissioner against Defendant under the PAGA during the PAGA Period, Cal. Lab.
11 Code § 2698, *et seq.* to the extent such claims are predicated on claims made or that
12 could have been made based on the facts and circumstances alleged in the Complaint
and Plaintiff's notice to the LWDA, including Labor Code sections §§ 201, 202, 203,
204, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and the related IWC Wage
13 Orders. **Exhibit 1** attached to the Mara Dec. at Section I (38).

14 In addition, Plaintiff agreed to a general release of her claims against Defendant. *See Exhibit*
15 **1** attached to the Mara Dec. at Section III (65). At final approval, Class Counsel will seek approval of
16 this Enhancement Payment to the named Plaintiff in the sum of \$2,500. As will be detailed at final
17 approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is
giving to Defendant in exchange for the \$2,500 payment.

18 In addition, this payment is further supported by the fact that plaintiffs are often subjected to
19 the stigma associated with bringing these types of lawsuits. In this age of technology, employers
20 engage in thorough background checks on their employees. As these case filings are all public record,
21 a simple "Google" search is all it would take for Plaintiff's name to appear associated with these
22 pending lawsuits against their former employers. This could be a significant factor in any employer's
23 decision to hire Plaintiff in the future.

24 Plaintiff took it upon herself to delay recovery of her individual claims by proceeding with
25 class and representative actions, with a full understanding of the risks involved. Plaintiff was fully
26 aware that class action and representative litigation would cause Defendant to incur hefty costs
27 throughout the litigation, and that if she was unsuccessful in these cases, may be liable for some, or
28 even all, of these costs. Despite this knowledge, Plaintiff pushed forward with the litigation; she was

1 always readily available by phone and fully participated every step of the way throughout the entirety
2 of this process.

3 Courts routinely approve service payments, or incentive awards, to compensate named
4 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
5 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*
6 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
7 Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the \$2,500
8 payment to the named Class Representative is fair, appropriate and justified as part of the overall
9 settlement.

10 **IV. ARGUMENT**

11 **a. Class Action Settlements are Subject to Court Review and Approval Under the 12 California Rules of Court**

13 Rule 3.769 requires court approval for class action settlements.¹⁰ “Before final approval, the
14 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
15 Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class
16 settlements:

17 (a) A settlement or compromise of an entire class action, or a cause of action in a
18 class action, or as to a party, requires the approval of the court after hearing.

19 (c) Any party to a settlement agreement may serve and file a written notice of
20 motion for preliminary approval of the settlement. The settlement agreement
21 and proposed notice to class members must be filed with the motion, and the
22 proposed order must be lodged with the motion.

23 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
24 account “all the normal perils of litigation as well as the additional uncertainties inherent in complex
25 class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den.
26 sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

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

28 In deciding whether to approve a proposed class action settlement under Code of Civil

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

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

11 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
12 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
13 nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties
14 conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms
15 of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration
16 of David Mara, Esq. as **Exhibit 1**.

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

18 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
19 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
20 support the settlement. The settlement was only possible following discovery and evaluation of
21 Defendant’s policies and procedures, as well as the data produced for the putative class, which
22 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
23 This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and
24 weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
25 485 F. Supp. 610, 617.

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

27 Both Plaintiff’s Counsel and Defendant’s Counsel are experienced in wage and hour
28 employment law and class actions. Plaintiff’s Counsel has significant experience in litigating unpaid

wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement class actions. 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. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement. Defendant’s Counsel has experience representing companies and regularly deals with wage and hour litigation matters. Accordingly, both Parties’ Counsel are experienced in wage and hour employment law and class actions.¹¹

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into 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. Finally, *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.”

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.

1 *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38
2 Cal.3d 488, 499-500. As the following subsections show, the Parties' investigation and discovery
3 revealed plenty of reasons to discount claims and agree to this settlement.

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

6 The proposed settlement was only possible following significant discovery, an evaluation of
7 Defendant's relevant policies and procedures, and Plaintiff's independent investigation. This
8 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The
9 discovery conducted resulted in Plaintiff's central theories of liability, which are predicated on
10 Plaintiff's claims that Defendant failed to pay hourly employees for all time worked, failed to provide
11 meal periods, and failed to provide rest periods. As explained above, Defendant maintains that the
12 discovery produced demonstrates that it would succeed at both class certification and on the merits.

13 Although, Plaintiff believes this case is suitable for certification on the claimed bases that there
14 are company-wide policies and practices that Plaintiff contends violate California law and uniformly
15 affect the class members, Defendant's counter-arguments and affirmative defenses raise uncertainties
16 with respect to both class certification and success on the merits. As the California Supreme Court
17 ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the
18 trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with
19 respect to certification of wage and hour claims.¹² While remaining confident in the strengths of their
20 claims, all of these factors led Plaintiff to discount the following maximum potential damage claims.

21 **2. Exposure and the Risks for Each Claim**

22 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's
23 claims, Defendant provided Plaintiff with information and data points which Plaintiff and her expert
24 used to establish a representative damage model, as explained below. *Mara Dec.* ¶ 21.

25 _____
26 ¹² See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class
27 claiming misclassification and ordering summary adjudication in favor of employees), *review granted*,
28 171 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).

A. Meal Periods

Plaintiff argues that Defendant fails to provide Class Members with duty-free 30-minute meal periods before the fifth hour of work in compliance with California law. Approximately 96.8% of employee shifts over five (5) hours in length in the time records provided by Defendant indicate an instance where Defendant failed to provide a meal period in compliance with California law, whether it be an untimely meal period, a short meal period, or the failure to provide a meal period at all. Under *Donohue*, these are presumed to be meal period violations for which Defendant must compensate Class Members. Accordingly, Defendant's **maximum** exposure under Plaintiff's meal period claim is \$208,460 (Approximately 14,890 shifts with presumed meal period violations x \$14.00 average hourly rate = \$208,460). Mara Dec. ¶ 22.

Plaintiff had to discount the maximum exposure of these claims to account for the viability of Defendant's counter arguments. Defendant argues that its meal period policy is facially lawful, that it provides employees with meal periods in compliance with California law, and that Defendant would be able to provide declarations from employees stating that they were able to take these meal periods without any interference from Defendant. Defendant claims this evidence would be more than sufficient to rebut the presumption under *Donohue*, both at class certification and on the merits of the claim. Mara Dec. ¶ 23.

B. Rest Periods

Plaintiff also contends that Defendant has failed to provide Class Members with lawful rest periods. Plaintiff argues that Class Members were unable to leave the work premises during their rest periods. Accordingly, Defendant's **maximum** exposure under Plaintiff's rest period claim is \$248,486 (Approximately 17,749 approximate shifts over 3.5 hours x \$14.00 average hourly rate = \$248,486). Mara Dec. ¶ 24.

Plaintiff had to discount the maximum exposure of these claims to account for the viability of Defendant's counter arguments. Defendant argues that Class Members are free to spend their rest period time however they choose, including leaving the premises, even despite the fact that Defendant does not agree *Augustus* stands for the proposition that employees must be able to leave during breaks. This, coupled with Class Member testimony that Defendant claims will definitively demonstrate that

1 employees were free to leave the premises, and did leave the premises, during rest periods, will defeat
2 Plaintiff's claims both on the merits and at class certification. Mara Dec. ¶ 25.

3 **C. Unpaid Wages**

4 Plaintiff further alleges that Defendant operates under an unlawful rounding policy. With the
5 assistance of her expert, Plaintiff determined that employees were underpaid an average of 12.29
6 minutes of unpaid time over 11,026 shifts. If Plaintiff were to prevail on this claim, Plaintiff and the
7 Class Members would be entitled to the following **maximum** potential damages: \$31,619 (11,026
8 shifts x 12.29 minutes of unpaid time x \$14.00 average hourly rate = \$31,619). Mara Dec. ¶ 26.

9 Further, if Plaintiff were to prevail on her unpaid wages claim, she may also be entitled to
10 waiting time penalties. Plaintiff calculates the potential **maximum** exposure under the waiting time
11 penalties cause of action as \$100,800 (30 former employee Class Members during the three-year
12 statutory period x 30 days x 8 hours x \$14.00 average hourly rate = \$100,800). Mara Dec. ¶ 27.

13 Additionally, if Plaintiff were to prevail on her unpaid wages claim, she may also be entitled
14 to wage statement penalties. Plaintiff calculates the potential **maximum** exposure under the wage
15 statement cause of action as \$92,000 (\$4,000 maximum penalty x 23 current employees = \$92,000).
16 Mara Dec. ¶ 28.

17 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
18 Defendant's counter arguments. As discussed above, Defendant contends that there is zero exposure
19 under the rounding claim because Plaintiff's analysis of the records is inaccurate, and that the rounding
20 policy is indisputably fair, neutral, and properly compensates employees over time for all hours
21 worked in compliance with California law. Further, as Plaintiff's claims for waiting time and wage
22 statement penalties are derivative of her wage claims, Defendant argues that they would not be liable
23 for these either. Should the Court agree with Defendant's arguments, Plaintiff and Class Members
24 would be entitled to no recovery under these causes of action. Mara Dec. ¶ 29.

25 **D. PAGA**

26 Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
27 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
28 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

[T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

Plaintiff alleges that Defendant has three (3) core violations –failure to pay all time worked, failure to provide meal periods, and failure to provide rest periods – of the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA violations goes back one year. As there were approximately 868 pay periods in the statutory period at the time of mediation, Plaintiff calculated Defendant’s potential maximum exposure under PAGA as follows:

$$\$100 \times 3 \text{ PAGA violations} \times 868 \text{ pay periods} = \$260,400$$

Mara Dec. ¶ 30.

Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s non-PAGA claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that “[i]n any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its obligations to comply with the law seriously. *Id.* Defendant maintains that if the case were to continue in litigation, they would be able to show that they took their obligations to comply with the law seriously. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, it is likely that the Court would reduce the maximum penalty allowed.

In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful conduct that Plaintiff bases her other claims, Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s class claims. If Plaintiff is ultimately unable to prevail on any one of his class claims, his recovery under the PAGA as to that violation would also fail. The likelihood of the Court reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability

1 is proven as to each of Plaintiff's claims – is also higher in this case where these same individuals will
2 also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold*
3 *Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist.
4 LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
5 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§
6 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
7 PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
8 penalties are highly uncertain.”).

9 **3. The Settlement Amount of \$180,000 is Reasonable**

10 Not taking into account any of their defenses or arguments, Defendant's total exposure if
11 Plaintiff was successful in her core claims would be approximately \$548,946 [\$208,460 (meal period
12 exposure) + \$248,486 (rest period exposure) + \$92,000 (unpaid wages exposure)]. If Plaintiff is
13 successful in their unpaid wage claims, she may also be entitled to damages for waiting time and wage
14 statement penalties in the amount of \$100,800 and \$92,000, respectively. If all of Plaintiff's claims
15 are successful, she may also be entitled to PAGA penalties in the maximum amount of \$260,400. *Mara*
16 *Dec.* ¶ 31.

17 Based upon the risks just discussed, Plaintiff had to discount the maximum potential exposure.
18 Plaintiff also had to consider that, should the Court agree with her theories and grant certification as
19 to each of the claims, she may not be awarded the full exposure at trial. Plaintiff also had to consider
20 that the Court could agree with Defendant's arguments. The vast majority of the damages at issue
21 hinge on Plaintiff's theories of liability regarding meal periods, rest periods, and unpaid wages. Should
22 these claims fail, the derivative claims for waiting time, wage statement, and PAGA penalties would
23 also fail. All of these factors led Plaintiff to reduce the realistic potential exposure in order to gain a
24 definite monetary recovery for the class.

25 Further, Defendant's financial condition raises serious issues moving forward in litigation.
26 Defendant provided Plaintiff's counsel with its tax returns for 2020, 2021, and 2022. These documents
27 reflect that Defendant's combined overall business income over this three-year span is less than the
28 total GSA of \$180,000. The most recent tax return from 2022 also shows that even the entirety of
Defendant's business assets, when factoring in its reported liabilities, would only be able to just barely

1 cover the total GSA of \$180,000. As a result, there is a substantial risk that Defendant may no longer
2 be in business if it is forced to continue paying the costs and fees to litigate this matter, let alone pay
3 any judgement owed if Plaintiff were to prevail on the merits of her claims. If this occurs, employees
4 would not receive **any** compensation for the wage and hour violations Plaintiff alleges against
5 Defendant. Mara Dec. ¶ 32.

6 In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the settlement
7 amount of \$180,000 – **with an average settlement share amount estimated at \$1,040** – is a
8 reasonable and fair settlement amount. Mara Dec. ¶ 33.

9 A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
10 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
11 reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
12 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the
13 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
14 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
15 the public interest may indeed be served by a voluntary settlement in which each side gives ground in
16 the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n*
17 (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a
18 fraction of the potential recovery does not...render the settlement inadequate or unfair”).

19 **c. Provisional Class Certification Should be Granted**

20 Under California law, a class action is appropriate when the class is ascertainable and there is
21 “a well-defined community of interest in the questions of law and fact involved affecting the parties
22 to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil
23 Procedure § 382 for class certification follow federal law according to Rule 23 of the Federal Rule of
24 Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of
25 representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also*
26 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court
27 must certify a class for settlement purposes if a class has not already been certified, “it is well
28 established that trial courts should use different standards to determine the propriety of a settlement

1 class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used
2 for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
3 859 citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

4 Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these
5 elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.
6 Plaintiff seeks approval of the following Class for settlement purposes only: All current and former
7 non-exempt employees who worked for Defendant in California from June 21, 2019, through April
8 20, 2024.

9 **i. The Proposed Settlement Class is Ascertainable**

10 Plaintiff contends that the proposed Settlement Class is ascertainable because of all of the class
11 members have worked for Defendant and have been identified through Defendant’s own records, such
12 as employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926,932 (finding
13 that “Class Members are ‘ascertainable’ where they may be readily identified without unreasonable
14 expense or time by reference to official records.”); *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th
15 905, 919 (“[c]lass members are ‘ascertainable’ where they may be readily identified without
16 unreasonable expense or time by reference to official [or business] records.”). Thus, the
17 ascertainability requirement is met.

18 **ii. The Proposed Settlement Class is Sufficiently Numerous**

19 The numerosity requirement is met if the class is so large that joinder of all members would be
20 impracticable. *Gay v. Waiters’ & Dairy Lunchmen’s Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff’d*
21 (9th Cir. 1982) 694 F.2d 531. “There is no set number required to maintain a class action, and the
22 statutory test is whether a class is so numerous that ‘it is impracticable to bring them all before the
23 court.’” *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223
24 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995)
25 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is more readily met
26 when a class contains employees suing their present employer . . . This is because class members may
27 be unwilling to sue their employer individually out of fear of retaliation.” *Romero v. Producers Dairy*
28 *Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, “fear of

1 retaliation for individual suits against an employer is a justification for class certification in the arena
2 of employment litigation, even when it is otherwise questionable that the numerosity requirements
3 were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate
4 to induce aggrieved employees quietly to accept substandard conditions.” *Gentry v. Superior Court*
5 (2007) 42 Cal.4th 443, 460 (citation omitted), *overruled on other grounds in Iskanian v. CLS Transp.*
6 *Los Angeles, LLC* (2014) 59 Cal.4th 348.

7 Here, Defendant’s records show that the proposed Settlement Class has approximately
8 seventy-five (75) members. Plaintiff contends that joinder of all Class Members is impracticable and,
9 therefore, a class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017,
10 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as
11 few as 28 is acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing
12 *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that
13 classes of over forty (40) individuals are numerous enough to meet the numerosity requirement. *See*
14 *Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class that is
15 comprised of approximately seventy-five (75) members is sufficient to satisfy the numerosity
16 requirement.

17 **iii. The Commonality Requirement is Met**

18 The commonality requirement is met if there are questions of law and fact common to the class.
19 *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
20 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
21 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members to
22 individually establish eligibility and damages does not mean individual fact questions predominate.’”
23 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there
24 is a predominant common legal question regarding how an employer’s policies impact its employees.
25 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) (“[T]he common legal
26 question remains the overall impact of Diva’s policies on its drives.”). Whether Plaintiff is likely to
27 prevail on his theory of recovery is irrelevant at the certification stage since the question is “essentially
28 a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v.*

1 *Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

2 Here, Plaintiff contends that the proposed Class Members' claims all stem from the same
3 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff
4 seeks the same legal remedies under state law on behalf of themselves and all Class Members. As
5 liability as to all Class Members is predicated on the same policies and practices, which Plaintiff
6 alleges violates California law, the commonality requirement has been satisfied.

7 **iv. The Typicality Requirement is Met**

8 The typicality requirement is met if the claims of the named representative are typical of those
9 of the class, though, "they need not be substantially identical." *Hanlon, supra*, 150 F.3d at 1020;
10 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiffs contend that their claims are typical of
11 the Class Members' claims because they arise from the same factual basis and are based on the same
12 legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987)
13 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff
14 alleges that Defendant's policies applied to all Class Members. Factual differences may exist between
15 Plaintiff's and the Class Members so long as the claims arise from the same events or course of conduct
16 and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*,
17 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same
18 unlawful conduct was directed at or affected both the named plaintiff and the class sought to be
19 represented, the typicality requirement is usually met irrespective of varying fact patterns which
20 underlie individual claims.] As such, the typicality requirement is satisfied.

21 **v. The Adequacy Requirement is Met**

22 The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
23 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the class.
24 *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51.
25 Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of interest with
26 the Class. She has been and continues to be committed to vigorously prosecuting this case. If any Class
27 Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of
28 interest between Plaintiff and the Class Members.

1 **vi. Notice to Class Members Complies with California Rule of Court 3.769(f)**

2 California Rule of Court 3.769(f), provides:

3 If the court has certified the action as a class action, notice of the final approval hearing
4 must be given to class members in the manner specified by the court. The notice must
5 contain an explanation of the proposed settlement and procedures for class members to
6 follow in filing written objections to it and in arranging to appear at the settlement
7 hearing and state any objections to the proposed settlement.

8 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises
9 the class of their rights to participate in the settlement, how to and when to object to or request
10 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
11 proposed Class Notice is attached as **Exhibit A** to the Settlement Agreement.

12 **V. CONCLUSION**

13 Plaintiff respectfully submits that the proposed settlement is in the best interests of the class
14 and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
15 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
16 should be preliminarily approved by the Court, the class should be conditionally certified for purposes
17 of settlement only, and the Notice of Class Action Settlement should be approved.

18 Respectfully Submitted,

19 **MARA LAW FIRM, PC**

20 Date: July 1, 2024

21 Signed: 

22 David Mara, Esq.
23 Matthew Crawford, Esq.
24 Attorneys for Plaintiff