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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

MARIA ISORDIA on behalf of herself,
all others similarly situated, and on
behalf of the general public,

Plaintiffs,

v.

TRESTLES HOLDINGS LLC DBA
HILLCREST POST ACUTE; and DOES
1-100,

Defendants.

Case No. SCV-273468
(Consolidated with Case No. 23CV01288)

*[Assigned for All Purposes to the
Hon. Christopher M. Honigsberg, Dept. 18]*

**PLAINTIFF MARIA ISORDIA'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Date: January 24, 2025
Time: 3:00 p.m.

Complaint Filed: June 9, 2023
Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiff Maria Isordia (hereinafter “Plaintiff”), on behalf of herself and the approximately
3 254 Class Members, respectfully requests that this Court preliminarily approve the Joint
4 Stipulation and Settlement Agreement (hereinafter “Agreement”¹) entered into between Plaintiff
5 and Defendant Trestles Holdings LLC dba Hillcrest Post Acute (“Defendant” or “Trestles”)
6 (hereinafter Plaintiff and Defendant are collectively referred to as the “Parties”). The Parties’
7 Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-
8 reversionary \$500,000 Gross Settlement Amount. The proposed Class is comprised of all non-
9 exempt employees who work or have worked for Defendant anywhere in the State of California
10 during the Class Period.² The Class Period is June 9, 2019, through September 9, 2024.³ It is
11 requested that the Court grant preliminary approval as, when analyzing the strengths and
12 vulnerabilities of the claims and Defendant’s potential liability exposure, this proposed settlement
13 of \$500,000 is well within the range of reasonableness. This settlement is estimated to pay Class
14 Members an average payment of approximately \$918.64.⁴ The proposed Agreement satisfies all
15 the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

16 As the following sections show, Class Counsel are convinced that the proposed settlement
17 is in the best interests of the Class based on the negotiations and a detailed knowledge of the
18 issues presented in this action. The length and risks of trial and perils of litigation that affect the
19 value of the claims were all carefully weighed. The defenses asserted by Defendant, the
20 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
21 establishing specific damages and various possible delays and appeals, were also carefully
22 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the
23 product of an all-day mediation with mediator David Rotman and was the product of non-
24 collusive, arm’s-length negotiations by informed counsel and Parties. The settlement is fair,

25 _____
26 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as
27 Exhibit 1. Exhibit 1 herein refers to the Parties’ Agreement.

28 ² Exhibit 1 at Paragraph 8.

³ Exhibit 1 at Paragraph 10.

⁴ The Net Settlement Amount is approximately \$233,333.34. \$233,333.34 divided by 254 class
members = \$918.64.

1 reasonable, and adequate. Accordingly, Plaintiff seek: (1) preliminary approval of the terms
2 contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff
3 as Class Representative; (4) appointment of Mara Law Firm, PC, as Class Counsel; (5) approval
4 of the Parties' Notice of Class Action Settlement⁵ (referred to herein as the "Class Notice" or
5 "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for final
6 approval of May 9, 2025.

7 **II. BACKGROUND**

8 Defendant operates a skilled nursing and rehabilitation facility in Petaluma, California.
9 Defendant employs hourly, non-exempt employees, such as Plaintiff, to work at its facility.

10 Plaintiff filed a class action complaint on June 9, 2023, in Sonoma County Superior Court
11 (Case No. SCV-273468). The complaint alleges the following causes of action against Defendant:
12 (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure to Provide
13 Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a Compliant
14 Sick Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply with Itemized
15 Employee Wage Statement Provisions; (7) Failure to Pay all Wages Due at the Time of
16 Termination; (8) Failure to Reimburse/Illegal Deductions; and (9) Violation of Unfair
17 Competition Law. (Mara Dec. ¶ 10).

18 Plaintiff submitted a Notice of Labor Code Violations to the LWDA on June 9, 2023.
19 Thereafter, she filed a PAGA Action complaint against Defendant in Sonoma County Superior
20 Court on October 30, 2023 (Case No. 23CV01288). The complaint sought civil penalties under
21 the PAGA in relation to the following alleged violations suffered by allegedly similar Aggrieved
22 Employees: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay Overtime; (3) Failure
23 to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Knowing and Intentional Failure
24 to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay all Wages
25 Due at the Time of Termination; (7) Failure to Adopt a Compliant Sick Pay Policy; and (8) Failure
26 to Reimburse Business Expenses Incurred in Discharging Duties. (Mara Dec. ¶ 11).

27 On December 6, 2024, the Parties filed a stipulation to consolidate Plaintiff's class and
28

⁵ The Class Notice is attached to the Agreement as Exhibit A.

1 PAGA actions. (Mara Dec. ¶ 12).

2 **III. INVESTIGATION AND LITIGATION HISTORY**

3 **a. Discovery and Investigation**

4 The Parties conducted significant investigation and discovery of the facts and law both
5 before and after this action was filed. Through informal discovery, Defendant produced relevant
6 policy documents that covered employees' employment with Defendant, such as employee
7 handbooks. Included within these documents were Defendant's wage and hour policies, including
8 its meal and rest period policies. Defendant also produced a sampling of time and wage records
9 for Class Members. Defendant also produced an arbitration agreement that is contends covered
10 employees' employment with Defendant. Plaintiff also requested, and Defendant produced, the
11 number of current and former employees, as well as the number of workweeks worked by Class
12 Members during the relevant time period, to establish a potential exposure model in preparation
13 for mediation. From this discovery, Plaintiff and her Counsel were able to analyze Defendant's
14 liability in this action and prepare a realistic damage model. (Mara Dec. ¶ 13).

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

16 The Parties attended an all-day mediation presided over by respected wage and hour
17 mediator David Rotman on August 8, 2024. This meditation was successful. The Parties then met
18 and conferred over all the terms of the settlement and finalized their settlement in the Parties'
19 Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. (Mara
20 Dec. ¶ 14).

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

22 **i. Defendant's Arbitration Agreement**

23 Defendant argues at the outset that it has an enforceable arbitration agreement that covers
24 Plaintiff's and the Class Members' employment. Defendant asserts that should litigation continue,
25 it would have filed a motion to compel arbitration of Plaintiff's individual claims. As part of this
26 motion, Defendant would have sought to dismiss the class claims and stay the PAGA
27 representative claims. Plaintiff contends that she would oppose the motion and believes that the
28 motion contains unconscionable terms such that the Court would have declined to enforce it.

1 (Mara Dec. ¶ 15).

2 Plaintiff asserts that the arbitration agreement in Defendant's employee handbook is
3 unenforceable. Plaintiff contends that Defendant's arbitration agreement is substantively
4 unconscionably overbroad, lacks mutuality, unilaterally burdens the employee, and is unjustly
5 one-sided in favor of Defendant. In making these arguments, Plaintiff relies on the case *Cook v.*
6 *University of Southern California* (2024) 102 Cal.App.5th 312, 321-325. Plaintiff also argues that
7 Defendant's arbitration agreement is procedurally unconscionable because it is a contract of
8 adhesion, was unilaterally drafted by Defendant, was presented to employees on a take-it-or-
9 leave-it basis, and was a condition of employment. For these reasons, Plaintiff contends that
10 Defendant's arbitration agreement is unenforceable. (Mara Dec. ¶ 16).

11 Defendant disagrees and contends that the Court would uphold its agreement and compel
12 Plaintiff's individual claims to arbitration and dismiss Plaintiff's class claims. Defendant further
13 asserts that, to the extent the Court were to find any of the provisions in the agreement to be
14 unenforceable, the Court could sever those terms from the arbitration agreement and enforce the
15 remainder of the agreement. Plaintiff contends that severance is not possible as the agreement
16 permeates with unconscionability. (Mara Dec. ¶ 17).

17 As such, the Parties have a disagreement as to whether Defendant's arbitration agreement
18 is enforceable. As this is a threshold issue, if the Court were to agree with Defendant, Plaintiff's
19 individual claims would be compelled to arbitration and the class claims would be dismissed and
20 the PAGA representative claims would be stayed. If this were to occur, the damages under
21 Plaintiff's class claims would be eliminated. (Mara Dec. ¶ 18).

22 **ii. Rest Periods**

23 Plaintiff alleges that that employees are not provided with lawful rest periods. Employers
24 have an obligation to provide employees with ten (10) minute rest periods. An employer's
25 obligation to provide its employees with rest periods arises under the Industrial Welfare
26 Commission Wage Orders. Wage Order 5-2001, Section 12(A) states, "[e]very employer shall
27 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
28 the middle of each work period. The authorized rest period time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
2 thereof.” (Mara Dec. ¶ 19).

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

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

21 Defendant also counters that even if it did tell employees they are to remain on the
22 premises, a point that Defendant does not concede, the practical limitations the ten (10) minutes
23 allotted for rest periods imposes on an employee’s movement are what prevent employees from
24 leaving the premises. In other words, the time limitation of only having ten (10) minutes for rest
25 periods prevents off-premises movement during rest periods, not expressly or impliedly telling
26 employees that rest periods are to be taken on the premises. Based on the practical limitations
27 associated with ten (10) minute rest periods, and not Defendant’s policies, Defendant contends
28 its policies are aligned with, and not antagonistic to *Augustus*. Defendant finds support for this in

1 the following language from *Augustus*:

2 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)), they
3 impose practical limitations on an employee's movement. That is, during a rest
4 period an employee generally can travel at most five minutes from a particular
work post before returning to make it back on time. Thus, one would expect that
employees will ordinarily have to remain on site or nearby.

5 *Augustus, supra*, 2 Cal.5th at 270. (Mara Dec. ¶ 22).

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

11 **iii. Meal Periods**

12 Plaintiff contends that Defendant does not provide employees with meal periods that
13 conform with California law. Employers have an obligation under California law to provide
14 employees with thirty (30) minute meal periods. Under California Labor Code section 512(a),
15 "[a]n employer may not employ an employee for a work period of more than five hours per day
16 without providing the employee with a meal period of not less than 30 minutes" Cal. Lab.
17 Code § 512(a). An employer "satisfies this obligation [to provide meal periods] if it relieves its
18 employees of all duty, relinquishes control over their activities and permits them a reasonable
19 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them
20 from doing so." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here,
21 Plaintiff contends that Defendant's time records show non-compliant meal periods. (Mara Dec. ¶
22 24).

23 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
24 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
25 presumption that the meal periods were not provided: "If time records show missed, short, or
26 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
27 arises" that the meal periods were not provided in accordance with California law. *Donohue v.*
28

1 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show
2 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed
3 that meal period violations occurred. (Mara Dec. ¶ 25).

4 Defendant asserts that its meal period policy is lawful and that it provides employees with
5 meal periods in compliance with California law. Defendant alleges that if litigation continues it
6 would be able to show that it advised employees of the right to take a meal period in compliance
7 with California law. Defendant contends that employees either took a lawful meal period or
8 knowingly and voluntarily decided to skip the meal period or take a late or short meal period.
9 Defendant contends that this evidence would rebut the presumption under *Donohue v. AMN*
10 *Services, LLC*. Defendant also asserts that in rebutting the presumption, the Court or fact finder
11 would have to ask each employee why their time records show a non-compliant meal period.
12 Defendant contends that, due to this, class certification is not proper as individualized issues
13 would predominate. Defendant also asserts that the evidence in this case shows that it paid meal
14 period premiums in shifts in which employees were not provided with compliant meal periods.
15 Thus, Defendant contends that to the extent an employee was not provided the opportunity to take
16 a legally compliant meal period, they were provided a meal premium. (Mara Dec. ¶ 26).

17 **iv. Unpaid Wages – Regular Rate of Pay**

18 Labor Code section 510 and Wage Order 5 require employers to pay non-exempt
19 employees overtime wages of no less than one and one-half times their respective regular rates
20 of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess
21 of forty hours in one workweek, and/or the first eight hours worked on the seventh consecutive
22 day of the workweek. The regular rate of pay under California law includes all remuneration for
23 employment paid to, on behalf of, the employee. In *Alvarado v. Dart Container Corporation of*
24 *California*, the California Supreme Court observed, “[r]egular rate of pay, which can change
25 from pay period to pay period, includes adjustments to the straight time rate, reflecting, among
26 other things, shift differentials and the per hour value of any nonhourly compensation the
27 employee has earned.” *Alvarado v. Dart Container Corporation of California* (2018) 4 Cal. 5th
28 542, 554. (Mara Dec. ¶ 27).

1 Here, Plaintiff contends that Defendant pays employees non-discretionary bonuses but fails
2 to include these payments in employees' regular rate of pay for purposes of overtime. Defendant
3 argues that the bonuses paid are entirely discretionary and, therefore, do not need to be included
4 in the regular rate of pay. Thus, the Parties have a dispute about whether Defendant was required
5 to adjust the regular rate of pay due to bonuses paid to employees. (Mara Dec. ¶ 28).

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

7 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
8 waiting time penalty claims. These claims are derivative of Plaintiff's meal period, rest period,
9 and unpaid wages claims. Should Plaintiff's meal period, rest period, and unpaid wages claims
10 fail, these claims would also fail. (Mara Dec. ¶ 29).

11 In addition, Defendant contends that even if Plaintiff were successful in her meal and rest
12 period, she would have to prove Defendant "willfully" failed to pay employees the appropriate
13 wages due upon separation of employment. "A willful failure to pay wages within the meaning
14 of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an
15 employee when those wages are due. However, a good faith dispute that any wages are due will
16 preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520.
17 "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based
18 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
19 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."
20 *Id.* (Mara Dec. ¶ 30).

21 Defendant contends that any failure to pay meal period premiums, rest period premiums,
22 or additional overtime wages due to the regular rate of pay at the separate of employment was not
23 willful. Defendant argues that it would not be liable for waiting time penalties because a "good
24 faith dispute" exists over the payment of those premium wages. *See* Cal. Code Regs. Tit. 8 §
25 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 31).

26 Further, Defendant contends that Plaintiff would also have to prove that Defendant
27 "knowingly and intentionally" failed to comply with the wage statement requirements under
28 Labor Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.

1 Defendant maintains that it reasonably, and in good faith believes that it was providing a complete
2 and accurate wage statement in compliance with California law. (Mara Dec. ¶ 32).

3 Defendant also argues that Plaintiff’s meal period, rest period, and unpaid wages claims
4 cannot form the basis of her wage statement claim. Defendant relies on the case *Maldonado v.*
5 *Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer
6 injury under California Labor Code § 226(a) so long as the wage statements correctly reflected
7 the hours worked and the pay received even if the pay is later determined to be inaccurate. (Mara
8 Dec. ¶ 33).

9 **vi. PAGA Penalties**

10 Plaintiff also seeks PAGA penalties for the claims outlined above. PAGA allows the
11 private enforcement of certain California Labor Code sections relating to wage and hour
12 violations. The statute of limitations for PAGA violations goes back one year. Because Plaintiff’s
13 PAGA claims are based on the same alleged unlawful conduct as her class claims, Plaintiff’s
14 PAGA claims are subject to the same risks on the merits as Plaintiff’s class claims. (Mara Dec. ¶
15 34).

16 In addition, Defendant maintains that Plaintiff’s PAGA claims face manageability
17 concerns consistent with the class certification challenges. Specifically, Defendant has due
18 process rights which would not permit Plaintiff to attempt to generalize violations from disparate
19 anecdotal evidence. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. (Mara Dec. ¶ 35).

20 In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
21 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the
22 Aggrieved Employees – assuming liability is proven as to each of Plaintiff’s claims – is higher in
23 this case where these same individuals may also be receiving money for the same unlawful
24 conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018)
25 Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA
26 penalties sought are at least partially duplicative of penalties granted by the underlying Labor
27 Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has
28 discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §

2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such, the Court will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees. (Mara Dec. ¶ 36).

IV. TERMS OF THE PROPOSED SETTLEMENT

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

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 \$500,000 (“Gross Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of up to \$166,666.66 (33.33% of the GSA)⁶ 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) actual litigation expenses estimated not to exceed \$35,000;⁷ (c) a Class Representative Enhancement Payment to the named class representative in a sum not to exceed \$5,000 in consideration for prosecuting this class action, serving as Class Representative, work performed, and risks undertaken for the payment of attorneys’ fees and costs in the event she had been unsuccessful in the matter; (d) settlement administration fees and expenses to Simpluris, estimated not to exceed approximately \$10,000;⁸ and (e) \$50,000 allocated to Plaintiff’s claims under the PAGA. Of this payment, 75%, or \$37,500 will be provided to the LWDA, and 25%, or \$12,500, will be available for distribution to Aggrieved Employees.⁹

///

⁶ Although Class Counsel seeks attorneys’ fees under the percentage method, Class Counsel will also provide the Court with their lodestar information at final approval.

⁷ 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 \$35,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

⁸ 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.

⁹ Aggrieved Employees are all Class Members who worked at least one (1) workweek for Defendant in California during the period of June 9, 2022, through September 9, 2024. (Exhibit 1 at Paragraph 2).

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

2 After all Court-approved deductions from the GSA, it is estimated that \$233,333.34 (“Net
3 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement
4 payment, will be distributed to Participating Class Members.¹⁰ Subject to the terms and conditions
5 of the settlement, Participating Class Members will receive a pro-rated share of the Net Settlement
6 Amount, less applicable withholdings, based on the number of workweeks they worked in
7 California while employed by Defendant during the Class Period. The formula for distribution to
8 Participating Class Members shall be calculated as follows: Trestles shall provide the Settlement
9 Administrator with the total number of work weeks worked by all Class Members during the
10 Class Period; the Settlement Administrator shall then divide the Net Payment by the total number
11 of work weeks resulting in a value for each work week attributable to Class Members (“Work
12 Week Value”); the Settlement Administrator shall then take the number of work weeks worked
13 by each Class Member and multiply it by the Work Week Value. (Exhibit 1 at Paragraph
14 56(A)(i)). This payment will be divided into a “wage portion” to compensate Participating Class
15 Members for alleged unpaid wages and a “non-wage portion” to compensate Participating Class
16 Members for alleged interest and penalties. The wage portion will make up 20% of each
17 Participating Class Members’ individual settlement payment, and the non-wage portion will make
18 up 80% of each Participating Class Members’ individual settlement payment. (Exhibit 1 at
19 Paragraph 56(B)).

20 In addition, Aggrieved Employees will receive a pro-rated share of the Net Settlement
21 Amount, less applicable withholdings, based on the number of pay periods they worked in
22 California while employed by Defendant during the PAGA Period. The formula for distribution
23 to Aggrieved Employees shall be calculated as follows: Trestles shall provide the Settlement
24 Administrator with the total number of pay periods worked by all Aggrieved Employees during
25 the PAGA Period; the Settlement Administrator shall then divide the Net PAGA Settlement
26 Amount by the total number of pay periods resulting in a value for each pay period attributable

27 _____
28 ¹⁰ Participating Class Members are all Class Members who do not submit a valid and timely
request to exclude themselves from this Settlement. (Exhibit 1 at Paragraph 32).

1 to Aggrieved Employees (“Pay Period Value”); the Settlement Administrator shall then take the
2 number of pay periods worked by each Aggrieved Employee and multiply it by the Pay Period
3 Value. (Exhibit 1 at Paragraph 57(A)). This payment will be treated as 100% penalties. (Exhibit
4 1 at Paragraph 57(B)).

5 Under no circumstances will any portion of the \$500,000 settlement revert to Defendant.

6 **c. Notice to the Class**

7 Within thirty (30) days after entry of the order granting Preliminary Approval, Defendant
8 shall deliver to the Settlement Administrator an electronic database, which will list the Class
9 Data¹¹ and PAGA Data¹². If any or all of this information is unavailable to Defendant, Defendant
10 will so inform Class Counsel and the Parties will make their best efforts to reconstruct or
11 otherwise agree upon how to deal with the unavailable information. The Settlement Administrator
12 will use the National Change of Address Database to obtain updated addresses for Class
13 Members. The Class Data and PAGA Data shall be based on Defendant’s payroll, personnel, and
14 other business records. The Settlement Administrator shall maintain the Class Data and PAGA
15 Data and all information contained within the Class Data and PAGA Data as private and
16 confidential. (Exhibit 1 at Paragraph 60(C)(i)).

17 Within ten (10) days after receipt of the Class Data and PAGA Data, the Settlement
18 Administrator will mail via first-class regular U.S. Mail the Class Notice in English and Spanish
19 to all identified Class Members and Aggrieved Employees using the mailing address information
20 provided by Defendant and the results of the search of the National Change of Address Database
21

22 ¹¹ The Class Data is the electronic database Defendant shall deliver to the Settlement
23 Administrator which will list the following information for each Class Member: (1) first and last
24 name; (2) last known mailing address; (3) social security number; (4) telephone number; and
25 (5) the total number of weeks during which the Class Member performed work during the Class
Period. The Class Data shall be based on Defendant’s payroll, personnel, and other business
records. (Exhibit 1 at Paragraph 7).

26 ¹² The PAGA Data is the electronic database Defendant shall deliver to the Settlement
27 Administrator which will list the following information for each Aggrieved Employee: (1) first
28 and last name; (2) last known mailing address; (3) social security number; (4) telephone number;
and (5) the total number of pay periods during which the Aggrieved Employee performed work
during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on
Defendant’s payroll, personnel, and other business records. (Exhibit 1 at Paragraph 28).

1 on all Class Members and Aggrieved Employees. (Exhibit 1 at Paragraph 60(C)(iii)).

2 After notices are mailed, Class Members will have thirty (30) days to respond to the
3 settlement (this is referred to as the “Response Deadline”). (Exhibit 1 at Paragraph 37). Class
4 Members may respond to the settlement by requesting to be excluded from it or objecting to it.
5 Class Members can also file a dispute as to the number of workweeks attributed to them.

6 **i. Requests for Exclusion**

7 The Class Notice will provide that Class Members who wish to exclude themselves from
8 the Settlement must mail to the Settlement Administrator a written request for exclusion. The
9 written request for exclusion must: (a) state the Class Member’s name, address, telephone
10 number, and the last four digits of the Class Member’s social security number or employee
11 identification number; (b) state the Class Member’s intention to exclude themselves from or opt
12 out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class
13 Member or their lawful representative; and (e) be postmarked no later than the Response
14 Deadline. (Exhibit 1 at Paragraph 60(E)).

15 **ii. Objections**

16 The Class Notice will provide that the Class Members who wish to object to the Settlement
17 must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no
18 later than the Response Deadline. The timeframe to submit an objection will not be increased for
19 returned mailings. Any Objections shall state: (a) the objecting person’s full name, address, and
20 telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in
21 clear and concise terms, the legal and factual arguments supporting the objection; (d) list
22 identifying witness(es) the objector may call to testify at the Final Approval hearing; and
23 (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final
24 Approval hearing. (Exhibit 1 at Paragraph 60(D)).

25 **iii. Disputes**

26 If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute
27 the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee
28 may notify the Settlement Administrator by mail or telephone no later than the Response Deadline

1 and should produce any available supporting evidence, such as wage statements, offers of
2 employment, termination letters, and/or other employment records, to the Settlement
3 Administrator. The documentation should provide evidence of the dates the Class Member or
4 Aggrieved Employee contends they worked for Defendant during the Class Period or PAGA
5 Period. The Settlement Administrator shall then provide the documentation provided by the Class
6 Member or Aggrieved Employee to Defendant. Defendant shall review its records, the
7 documentation provided by the Class Member or Aggrieved Employee, and shall provide
8 information to the Settlement Administrator in response to any such disputed claim. Defendant's
9 records shall be presumed to be determinative, but the Settlement Administrator shall evaluate
10 the evidence submitted by the Class Member or Aggrieved Employee and make the decision as
11 to which dates should be applied. The determination by the Settlement Administrator shall be
12 final and binding. (Exhibit 1 at Paragraph 60(F)).

13 **d. Website**

14 The Settlement Administrator shall establish a website to host documents relevant to this
15 lawsuit and the proposed Settlement. Such documents shall include: the operative complaint; this
16 Joint Stipulation and Settlement, together with its exhibits; and the Class Notice. (Exhibit 1 at
17 Paragraph H).

18 **e. Distribution of Funds**

19 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
20 Settlement no later than thirty (30) calendar days after the Effective Final Settlement Date.
21 (Exhibit 1 at Paragraph 60(L)(i)). The Effective Final Settlement Date is sixty-six (66) days after
22 the Court grants Final Approval or, if an appeal is filed, the latest of the following: (1) the day
23 after the appeal is dismissed or withdrawn with prejudice, or (2) the day after the appeal is decided
24 finding this Settlement to be enforceable. (Exhibit 1 at Paragraph 16).

25 Within ten (10) calendar days after the Defendant provides the Gross Settlement Amount
26 to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net
27 Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement
28 Amount to be Paid to Aggrieved Employees; (3) the Attorneys Fee Award and Cost Award to

1 Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative
2 Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the
3 Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and
4 (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.
5 (Exhibit 1 at Paragraph 60(L)(ii)).

6 Participating Class Members and Aggrieved Employees must cash or deposit their
7 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
8 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90)
9 calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating
10 that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and
11 become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks
12 remain uncashed or not deposited by the expiration of the 90-day period after mailing the
13 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after
14 the checks are mailed, cancel the checks. All funds associated with the Individual Settlement
15 Share checks returned as undeliverable and funds associated with those checks remaining un-
16 cashed shall be tendered to the State of California's Unpaid Wage Fund, in the name of the Class
17 Member. In such event, the Class Member who did not cash their check shall nevertheless remain
18 bound by the Settlement. (Exhibit 1 at Paragraph 60(O)).

19 **f. Release of Claims**

20 In exchange for a portion of the Net Settlement Amount, Participating Class Members will,
21 upon the Effective Final Settlement Date, release all claims asserted at any time in the Class
22 Action and from all other claims that could have been asserted based on the facts alleged in the
23 operative Complaints. (Exhibit 1 at Paragraph 34).

24 In addition, in exchange for a portion of the PAGA Payment, all Aggrieved Employees
25 will, upon the Effective Final Settlement Date, release all claims during the PAGA Period for
26 civil penalties that were pled or could have been pled based on a reasonable interpretation of the
27 facts included in the operative PAGA Action and/or raised in the PAGA demand letter submitted
28 to the Labor and Workforce Development Agency on June 9, 2023. (Exhibit 1 at Paragraph 35).

1 In addition, Plaintiff has agreed to a general release of her claims. (Exhibit 1 at Paragraph
2 63).

3 **V. ARGUMENT**

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

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

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

11 ...

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

14 Courts act within their discretion in approving settlements that are fair, not collusive, and
15 take into account “all the normal perils of litigation as well as the additional uncertainties inherent
16 in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167,
17 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
18 U.S. 905.

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

20 In deciding whether to approve a proposed class action settlement under Code of Civil
21 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
22 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement
23 is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
24 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
25 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
26

27 ¹³ 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*
28 (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.

objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court’s grant of preliminary approval is therefore requested.

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

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as Exhibit 1. While Plaintiff believes in the merits of 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 Defendant’s policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

iii. Counsel for Both Parties are Experienced in Similar Litigation

Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating meal period, rest period, unpaid wages, waiting time penalty, and wage statement claims. (Mara Dec. ¶¶ 3-9; Declaration of Peter Horton, Esq., ¶¶ 2-5). Plaintiff’s Counsel has prosecuted

1 numerous wage and hour class action cases on behalf of employees for California Labor Code
2 violations and thus are experienced and qualified to evaluate the class claims and to evaluate
3 settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This
4 experience instructed Plaintiff's Counsel on the risks and uncertainties of further litigation and
5 guided their determination to endorse the proposed settlement.¹⁴ Defendant's Counsel practices
6 labor and employment law and have represented numerous employers in similar types of claims.
7 Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class
8 actions.

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

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

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

27 _____
28 ¹⁴ 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 to this settlement.

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

5 The proposed settlement was only possible following significant discovery and an
6 evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant
7 produced for the putative class as referenced above. This permitted Class Counsel to engage in a
8 comprehensive analysis of liability and potential damages. The discovery conducted allowed
9 Plaintiff to evaluate the strengths and weaknesses of her theories of liability, which are predicated
10 on Plaintiff's claims that Defendant failed to provide to provide lawful meal and rest periods and
11 failed to pay all wages owed to employees. As explained herein, Defendant maintains that the
12 discovery produced demonstrates that it would succeed at both in denying class certification and
13 on the merits.

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

22 **2. Potential Exposure on Plaintiff's Claims**

23 The settlement encompasses approximately 15,434 workweeks. This equates to
24 approximately 51,325 shifts. Employees earned approximately \$24.76 per hour on average. (Mara
25 Dec. ¶ 37).

26 ¹⁵ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of
27 class claiming misclassification and ordering summary adjudication in favor of employees),
28 *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes
only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of
class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121
(reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422
(affirming denial of certification).

1 Plaintiff alleges that Defendant failed to provide employees with rest periods in
2 accordance with California law. Plaintiff contends that employees are not permitted to leave the
3 premises during rest periods. If Plaintiff were to prevail on this claim for the entire class period,
4 Plaintiff and the Class Members would be entitled to the following potential damages:
5 \$1,270,807. (51,325 shifts x \$24.76 = \$1,270,807). (Mara Dec. ¶ 38).

6 Defendant contends that this amount should be zero because it has a lawful rest period
7 policy and practice. Defendant disagrees and contends that it does not require employees to
8 remain on the premises during rest periods and that employees do, in fact, leave the premises
9 during rest periods. Accordingly, Defendant claims Plaintiff should take nothing on this claim
10 and, if the factfinder agreed, Plaintiff would take nothing. Although remaining confident in her
11 position, Plaintiff had no way of knowing how the factfinder would rule on this issue and a
12 substantial discount had to be given to make settlement possible.

13 In addition, Plaintiff alleges that Defendant failed to provide employees with meal periods
14 in accordance with California law because Defendant's time records show unlawful meal periods.
15 If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members
16 would be entitled to the following potential damages: \$355,825 (14,371 shifts with unique meal
17 period violations x \$24.76 = \$355,825.96). (Mara Dec. ¶ 39).

18 Defendant contends that this amount is too high as it has paid meal period premiums to
19 employees and because employees signed meal period waivers would cover these shifts.
20 Defendant asserts that no damages would be attributable to shifts in which a premium has already
21 been paid or in shifts where the meal period was waived and, thus, the maximum potential
22 damages would be reduced. Defendant also contends that that this amount should be zero because
23 it would be able to rebut the presumption under *Donohue*, in part, by showing it has a lawful meal
24 period policy.

25 Further, Plaintiffs allege that Defendant failed to adjust the regular rate of pay to account
26 for bonuses. Based upon the sampling of records, if Plaintiff were to prevail on this claim for the
27 entire class period, Plaintiff and the Class Members would be entitled to potential damages in the
28 amount of \$19,275.12. (Mara Dec. ¶ 40). Defendant contends that bonuses was discretionary and,

1 on that basis, do not need to be included in the regular rate of pay.

2 If Plaintiff were to prevail on her meal period, rest period, or unpaid wages claims, Plaintiff
3 may be entitled to penalties for inaccurate wage statements. If Plaintiff were to prevail on this
4 claim, the damages would be \$337,650.¹⁶ (Mara Dec. ¶ 41).

5 If Plaintiff were to prevail on her meal period, rest period, or unpaid wages claims, she
6 and the Class Members may also be entitled to waiting time penalties. Plaintiff calculates the
7 potential exposure under his waiting time penalties cause of action as \$1,016,150 (171 former
8 employees x 30 days x 8 hours x \$24.76 = \$1,016,150.40). (Mara Dec. ¶ 42).

9 If Plaintiff's meal period, rest period, or unpaid wages claims fail, these claims also fail.
10 There is also a possibility that the factfinder could find that these violations are not willful and
11 knowing and intentional. If this were to occur, Plaintiff and the Class would receive nothing under
12 these claims. In addition, a good faith dispute that any wages are due will preclude imposition of
13 waiting time penalties. Defendant argues that Plaintiff will not be able to show that any violations
14 were knowing and intentional and willful. Defendant also contends that there is a good faith
15 dispute about whether any wages are due. Defendant further argues that Plaintiff's overtime, meal
16 period, and rest period claims cannot form the basis of her wage statement claim. Defendant relies
17 on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that
18 employees do not suffer injury under California Labor Code § 226(a) so long as the wage
19 statements correctly reflected the hours worked and the pay received even if the pay is later
20 determined to be inaccurate. Plaintiff had to take these arguments into consideration.

21 Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
22 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
23 reads, in part, as follows:

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

27 ¹⁶ 137 initial violations x \$50 for an initial violation = \$6,850
28 3,308 subsequent violations x \$100 for a subsequent violation = \$330,800
\$330,800 + \$6,850 = \$337,650

1 The statute of limitations for PAGA violations go back one year. The potential damages under
2 Plaintiff's PAGA claim is \$1,060,900.¹⁷ (Mara Dec. ¶ 43).

3 As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as her class
4 claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class
5 claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
6 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiff
7 and the PAGA Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims
8 – is higher in this case where these same individuals may also be receiving money for the same
9 unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12,
10 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the
11 PAGA penalties sought are at least partially duplicative of penalties granted by the underlying
12 Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court
13 has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
14 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As
15 such, the Court may reduce any PAGA penalty amount awarded to Plaintiff and the PAGA
16 Aggrieved Employees. (Mara Dec. ¶ 44).

17 Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if
18 she were successful in her core claims, Defendant's total exposure would be approximately
19 \$1,645,907 [\$1,270,807 (rest period exposure) + \$355,825 (meal period exposure) + \$19,275
20 (unpaid wages exposure) = \$1,645,907]. If the fact finder were to side with Defendant on these
21 claims, Plaintiff and the Class Members would not be entitled to any damages for wage
22 statements, waiting time penalties, or PAGA penalties that are derivative of and dependent on
23 Plaintiff prevailing on her meal period, rest period, and unpaid wages claims. In addition, if the
24 Court were to find that Defendant's arbitration agreement is enforceable and dismiss Plaintiff's
25 class claims, the damages for Plaintiff's class claims would be reduced to zero. If Plaintiff is
26 successful in her unpaid wages, meal period, or rest period claims, and is able to prove that

27 ¹⁷ \$100 x 3 PAGA violations (meal periods, rest periods, and wage statements) x 3,445 pay
28 periods = \$1,033,500 plus \$100 x 2 PAGA violation (waiting time penalties and unpaid wages) x
137 pay periods = \$24,400.

1 Defendant's wage statement violations were knowing and intentional and that the waiting time
2 penalties violations were willful, she may also be entitled to damages for wage statements and
3 waiting time penalties in the amount of \$1,353,800 [\$337,650 (wage statements) and \$1,016,150
4 (waiting time penalties) = \$1,353,800]. Plaintiff and the Aggrieved Employees may also be
5 entitled to PAGA penalties in the amount of \$1,060,900, subject to Court reduction. (Mara Dec.
6 ¶ 45).

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

8 In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the
9 settlement amount of \$500,000 – with an average settlement share amount estimated at \$918.64
10 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 46).

11 It should be noted that a settlement is not judged solely against what might have been
12 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
13 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91
14 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;
15 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by
16 the proposed settlement is substantially narrower than it would be if the suits were to be
17 successfully litigated, this is no bar to a class settlement because the public interest may indeed
18 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
19 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688
20 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the
21 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*
22 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 , (noting that
23 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
24 attorneys’ fees was higher than median percentage for recoveries in shareholder class action
25 settlements, averaging 2.2%-3% from 2002 through 2006).

26 ///

27 ///

28 ///

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

2 Under California law, a class action is appropriate when the class is ascertainable and there
3 is “a well defined community of interest in the questions of law and fact involved affecting the
4 parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code
5 of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of
6 the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims,
7 adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P.
8 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted
9 that while a court must certify a class for settlement purposes if a class has not already been
10 certified, “it is well established that trial courts should use different standards to determine the
11 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
12 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior*
13 *Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
14 1794, 1807, fn. 19. Plaintiff contends, and Defendant does not dispute for settlement purposes
15 only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal.
16 App. 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes
17 only: All non-exempt employees who work or have worked for Defendant anywhere in the State
18 of California from June 9, 2019, through September 9, 2024.

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

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

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

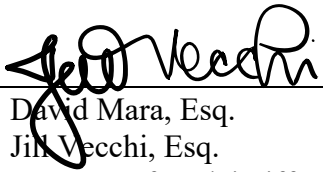
27 The proposed Class Notice meets all of these requirements. The proposed Class Notice
28 advises the class of their rights to participate in the settlement, how to and when to object to or
request exclusion from the settlement, and the date, time, and location of the final approval
hearing. The proposed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

1 **VI. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
3 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately
4 be granted final approval. Under the applicable class action criteria and guidelines, the proposed
5 settlement should be preliminarily approved by the Court, the class should be conditionally
6 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also
7 respectfully requests the Court set a final approval hearing date of May 9, 2025, or other available
8 date for the Court.

9
10 **MARA LAW FIRM, PC**

11 Date: December 20, 2024

12 Signed: 
13 David Mara, Esq.
14 Jill Vecchi, Esq.
15 Attorneys for Plaintiff MARIA
16 ISORDIA, on behalf of herself, all others
17 similarly situated, and on behalf of the
18 general public
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