

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

Douglas Han, Esq. (232858)
Shunt Tatavos-Gharajeh, Esq. (272164)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Ave., Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259
Email: dhan@JusticeLawCorp.com
statavos@JusticeLawCorp.com

Attorneys for ROYA NOORI and PAOLA OLIVO, on behalf of themselves,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ROYA NOORI and PAOLA OLIVO on
behalf of themselves, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

VISTA COMMUNITY CLINIC; and
DOES 1-100,

Defendants.

Case No.: 37-2023-00000144-CU-OE-CTL
(Consolidated with Case No.
37-2023-00005665-CU-OE-CTL)

*[Assigned for All Purposes to the
Honorable James A. Mangione; Dept. C-75]*

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

Date: September 13, 2024
Time: 9:00 a.m.

Complaint Filed: January 3, 2023
Trial Date: None Set

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND	2
III.	INVESTIGATION/LITIGATION HISTORY	3
a.	Discovery and Investigation	3
b.	The Parties Agreed to Attend Mediation.....	4
c.	The Parties’ Staunchly Conflicting Positions	4
i.	Meal Periods	4
ii.	Rest Periods.....	6
iii.	Wage Statements and Waiting Time Penalties	7
iv.	PAGA Penalties	8
IV.	TERMS OF THE PROPOSED SETTLEMENT	9
a.	Deductions from the Settlement	9
b.	Calculation of Settlement Payments to Class Members	10
c.	Notice to the Class	11
i.	Requests for Exclusion.....	12
ii.	Objections to the Settlement	12
iii.	Disputes	12
iv.	Returned Notices	13
d.	Website	13
e.	Distribution of Funds.....	14
f.	Release of Claims	15
V.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court	16
b.	The Settlement is Fair, Reasonable, and Adequate	16
i.	The Settlement was Reached as a Result of Arm’s-Length Negotiations	17

1	ii.	The Settlement is the Result of Thorough Investigation and Discovery	17
2	iii.	Counsel for Both Parties are Experienced in Similar Litigation	17
3	iv.	The Proposed Settlement is a Reasonable Compromise of Claims.....	18
4	1.	The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs’ Case	
5		and the Risks and Costs of Further Litigation	19
6	2.	Potential Exposure on Plaintiffs’ Core Claims.....	20
7	3.	The Settlement Amount of \$3,000,000 is Reasonable	21
8	c.	Provisional Certification Should be Granted.....	22
9	d.	Notice to the Class Complies with California Rule of Court 3.769(f)	23
10	VI.	CONCLUSION	23

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2</i> (2006) 144 Cal. App. 4th 121.....	19
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157.....	7
<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257.....	6, 21
<i>Avila v. Cold Spring Granite Co.</i> (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142	9
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610	17
<i>Bufile v. Dollar Fin. Grp., Inc.</i> (2008) 162 Cal.App.4th 1193.....	6
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58	5, 20
<i>Dunbar v. Albertson’s Inc.</i> (2006) 141 Cal. App. 4th 1422	19
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	16, 17, 18, 22
<i>Glob. Minerals & Metals Corp. v. Superior Court</i> (2013) 113 Cal.App.4th 836	22
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	16
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	22
<i>Harris v. Superior Court</i> (2007) 154 Cal. App. 4th 164	19
<i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F. 2d 167	16
<i>In re Omnivision Technologies, Inc.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616	22
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i> (1981) 452 U.S. 905	16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	18, 19
<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308.....	8
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	18
<i>Naranjo v. Spectrum Security Services, Inc.</i> (May 6, 2024, No. S279397) ___ Cal.5th___ [2024 Cal. LEXIS 2438].....	8
<i>Plotnik v. Meihaus</i> (2014) 208 Cal.App.4th 1590.....	8
<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117	21
<i>Sav-On v. Superior Court</i> (2004) 34 Cal.4th 319.....	19

1	<i>Tech-Bilt v. Woodward-Clyde & Associates</i> (1985) 38 Cal.3d 488	19
2	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	16
3	<i>Walsh v. IKON Solutions, Inc.</i> (2007) 148 Cal. App. 4th 1440.....	19
4	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 2	21, 22
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiffs Roya Noori and Paola Olivo (hereinafter “Plaintiffs”), on behalf of themselves
3 and the approximately 1,499 Class Members, respectfully request that this Court preliminarily
4 approve the Class Action and PAGA Settlement Agreement (hereinafter “Agreement”¹) entered
5 into between Plaintiffs and Defendant Vista Community Clinic (hereinafter “Defendant” or
6 “Vista”) (hereinafter Plaintiffs and Defendant are collectively referred to as the “Parties”). The
7 Parties’ Agreement seeks to resolve claims raised against Defendant in this matter in exchange
8 for a non-reversionary \$3,000,000 Gross Settlement Amount. The proposed Class is comprised
9 of all current and former non-exempt, hourly employees who were employed by Defendant in
10 California at any time from January 3, 2019, through January 18, 2024.² It is requested that the
11 Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the
12 claims and Defendant’s potential liability exposure, this proposed settlement of \$3,000,000 is
13 well within the range of reasonableness. This settlement is estimated to pay Class Members an
14 average payment of approximately \$1,137.42.³ The proposed Agreement satisfies all the criteria
15 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 _____
25 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Decl.”)
as **Exhibit 1**. “**Exhibit 1**” herein refers to the Parties’ Agreement.

26 ² **Exhibit 1** at Section A, Paragraph 5, Page 1 and Section A, Paragraph 12, Page 2.

27 ³ The Net Settlement Amount is approximately \$1,705,000. \$1,705,000 divided by 1,499
28 class members = \$1,137.42.

collusive, arm's-length negotiations by informed counsel and Parties. The settlement is fair, reasonable, and adequate. Accordingly, Plaintiffs seek: (1) preliminary approval of the terms contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiffs as Class Representatives; (4) appointment of Mara Law Firm, PC, and Justice Law Corporation as Class Counsel; (5) approval of the Parties' Court approved notice of Settlement and hearing date for Final Approval⁴ (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for final approval of January 10, 2025.

II. BACKGROUND

Defendant is a non-profit that operates medical care clinics predominately in San Diego County, but also in Riverside and Orange Counties. To runs its clinics, Defendant employs hourly, non-exempt employees, such as Plaintiffs in California.

On November 14, 2022, Plaintiff Noori provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. (Mara Decl., *supra*, at ¶ 10; Declaration of Douglas Han in Support of Motion for Preliminary Approval of Class Action Settlement ("Han Decl."), ¶ 9).

On January 3, 2023, Plaintiff Noori filed this wage-and-hour class action lawsuit in the Superior Court of California, County of San Diego (Case No. 37-2023-00000144-CU-OE-CTL). The lawsuit alleged the following causes of action against Defendant: (a) failure to pay all straight time wages; (b) failure to pay all overtime wages; (c) failure to provide meal periods; (d) failure to authorize and permit rest periods; (e) failure to adopt a compliant sick pay/paid time off policy; (f) knowing and intentional failure to comply with itemized employee wage statement provisions; (g) failure to pay all wages due at the time of termination of employment; (h) failure to reimburse/illegal deductions; and (i) violation of the Unfair Competition Law. (Mara Decl., *supra*, at ¶ 11; Han Decl., *supra*, at ¶ 10).

⁴ The Class Notice is attached to the Agreement as **Exhibit A**.

1 On February 8, 2023, Plaintiff Noori filed a representative Private Attorneys General Act
2 of 2004 (“PAGA”) action in the Superior Court of California, County of San Diego, asserting
3 allegations like those asserted in her wage-and-hour class action lawsuit (Case No. 37-2023-
4 00005665-CU-OE-CTL). (Mara Decl., *supra*, at ¶ 12; Han Decl., *supra*, at ¶ 11).

5 On March 21, 2023, Plaintiff Olivo filed a wage-and-hour class action lawsuit in the
6 Superior Court of California, County of San Diego (Case No. 37-2023-00011846-CU-OE-NC).
7 The lawsuit alleged violation of: (a) Labor Code sections 510 and 1198 (unpaid overtime); (b)
8 Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (c) Labor Code sections
9 226.7 (unpaid rest period premiums); (d) Labor Code sections 1194 and 1197 (unpaid minimum
10 wages); (e) Labor Code sections 201 and 202 (final wages not timely paid); (f) Labor Code section
11 226(a) (noncompliant wage statements); (g) Labor Code sections 2800 and 2802 (unreimbursed
12 business expenses); and (h) Business & Professions Code section 17200, *et seq.* (Han Decl.,
13 *supra*, at ¶ 12).

14 On July 31, 2023, the Court granted Plaintiff Noori’s request to consolidate her wage-and-
15 hour class action lawsuit (Case No. 37-2023-00000144-CU-OE-CTL) and representative PAGA
16 action (Case No. 37-2023-00005665-CU-OE-CTL) and designated the former as the lead case.
17 (Mara Decl., *supra*, at ¶ 13; Han Decl., *supra*, at ¶ 13).

18 On August 16, 2023, Plaintiff Noori filed a first amended complaint that added Plaintiff
19 Olivo as a named plaintiff. (Mara Decl., *supra*, at ¶ 14; Han Decl., *supra*, at ¶ 14). The first
20 amended complaint is referenced as the Operative Complaint in the Parties’ Agreement and in
21 release language paragraphs discussed below. (Exhibit 1 at Section B, Paragraph 6, page 5).

22 **III. INVESTIGATION/LITIGATION HISTORY**

23 **a. Discovery and Investigation**

24 The Parties conducted significant investigation and discovery of the facts and law both
25 before and after this action was filed. Through informal discovery, Defendant produced over nine
26 hundred (900) separate policy documents. These documents included policy documents that
27 covered Class Members’ employment with Defendant, such as employee handbooks. Included
28

1 within these documents were Defendant’s wage and hour policies, including its meal and rest
2 period policies. Defendant also produced a sampling of time and wage records for Class Members
3 which Plaintiffs had an expert review and analyze. This sampling included over eight (80) Excel
4 files that contained Class Members’ pay data and over fifty (50) Excel and PDF files that
5 contained Class Members’ time data. Plaintiffs also requested, and Defendant produced, the
6 number of current and former employees, as well as the number of workweeks worked by Class
7 Members during the relevant time period, to establish a potential exposure model in preparation
8 for mediation. Plaintiffs also located and interviewed several Class Members who worked for
9 Defendant throughout the Class Period. From this discovery, Plaintiffs and their Counsel were
10 able to analyze Defendant’s liability in this action and prepare a realistic damage model. (Mara
11 Decl., *supra*, at ¶ 15; Han Decl., *supra*, at ¶¶ 17-20).

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

13 The Parties attended an all-day mediation presided over by respected wage and hour
14 mediator David Rotman on January 18, 2024. This meditation was successful. The Parties then
15 met and conferred over all the terms of the settlement and finalized their settlement in the Parties’
16 Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. (*See*
17 Mara Decl., *supra*, at ¶ 16; *see also* Exhibit 1 attached thereto; Han Decl., *supra*, at ¶ 21).

18 **c. The Parties’ Staunchly Conflicting Positions**

19 **i. Meal Periods**

20 Plaintiffs contend that Defendant does not provide employees with meal periods that
21 conform with California law. Employers have an obligation under California law to provide
22 employees with thirty (30) minute meal periods. Under California Labor Code section 512(a),
23 “[a]n employer may not employ an employee for a work period of more than five hours per day
24 without providing the employee with a meal period of not less than 30 minutes” Cal. Lab.
25 Code § 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its
26 employees of all duty, relinquishes control over their activities and permits them a reasonable
27 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them
28

1 from doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here,
2 Plaintiffs contend that Defendant’s time records show non-compliant meal periods. (Mara Decl.,
3 *supra*, at ¶ 17).

4 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
5 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
6 presumption that the meal periods were not provided: “If time records show missed, short, or
7 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
8 arises” that the meal periods were not provided in accordance with California law. *Donohue v.*
9 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiffs contend that, here, the time records show
10 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiffs contend that it is presumed
11 that meal period violations occurred. (Mara Decl., *supra*, at ¶ 18).

12 Defendant asserts that its meal period policy is lawful and that it provides employees with
13 meal periods in compliance with California law. Defendant alleges that if litigation continues it
14 would be able to show that it advised employees of the right to take a meal period in compliance
15 with California law. Defendant contends that employees either took a lawful meal period or
16 knowingly and voluntarily decided to skip the meal period or take a late or short meal period.
17 Defendant contends that this evidence would rebut the presumption under *Donohue v. AMN*
18 *Services, LLC*. Defendant also asserts that in rebutting the presumption, the Court or fact finder
19 would have to ask each employee why their time records show a non-compliant meal period.
20 Defendant contends that, due to this, class certification is not proper as individualized issues
21 would predominate. Defendant also asserts that the evidence in this case shows that it paid meal
22 period premiums in shifts in which employees were not provided with compliant meal periods.
23 Thus, Defendant contends that to the extent an employee was not provided the opportunity to take
24 a legally compliant meal period, they were provided a meal premium. (Mara Decl., *supra*, at ¶
25 19).

26 ///

27 ///

28 {08483494 / 1}

1 **ii. Rest Periods**

2 Plaintiffs allege that that employees are not provided with lawful rest periods. Employers
3 have an obligation to provide employees with ten (10) minute rest periods. An employer’s
4 obligation to provide its employees with rest periods arises under the Industrial Welfare
5 Commission Wage Orders. Wage Order 4-2001, Section 12(A) states, “[e]very employer shall
6 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
7 the middle of each work period. The authorized rest period time shall be based on the total hours
8 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
9 thereof.” (Mara Decl., *supra*, at ¶ 20).

10 In California, the ten (10) minute rest break must be a net ten (10) minutes in a suitable
11 rest area. None of the time allotted for rest breaks can be consumed by the time it takes to get to
12 a suitable rest area. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 267-268
13 (relying on January 3, 1986 and February 22, 2002 Department of Labor Standards Enforcement
14 Letters wherein the DLSE ruled that the net ten-minute language for rest breaks means ten
15 minutes of time in a rest area and cannot include time it takes to get to and from the rest area).
16 The employer must show that it clearly articulates the right to a net ten (10) minutes, which
17 means it must clearly communicate what “net” ten minutes means and that, regardless of what
18 happens along the way to or from the rest area, employees are entitled to a full ten-minutes in
19 the rest area. *See Bufile v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1199 (the “onus
20 is on the employer to clearly communicate the authorization and permission [to take rest breaks]
21 to its employees.”). Plaintiffs contend that Defendant does not provide employees with rest
22 periods that are a net ten minutes at a suitable rest area. (Mara Decl., *supra*, at ¶ 21).

23 Defendant argues that it permits and authorizes lawful rest periods. Defendant maintains
24 an express written rest period policy that advises employees they will receive a paid break of 10
25 consecutive minutes for shifts lasting from 3.5 to 6 hours and two 10-minute rest periods for shifts
26 longer than 6 hours and up to 10 hours, and three 10-minute rest periods for shifts longer than 10
27 hours and up to 14 hours. Defendant further contends that it informs employees that they get ten
28

1 full, duty-free minutes of rest and that this time does not include the time it takes to get to a
2 suitable rest area. Defendant contends that if litigation continues, it would provide declarations
3 from employees which show that employees received full ten-minute rest breaks at a suitable rest
4 area. Defendant contends that the Court would have to ask each employee whether they received
5 full ten-minute breaks. Defendant asserts that doing so would defeat class certification. (Mara
6 Decl., *supra*, at ¶ 22).

7 **iii. Wage Statements and Waiting Time Penalties**

8 Plaintiffs also pursued claims for failure to provide accurate itemized wage statements and
9 waiting time penalty claims. These claims are derivative of Plaintiffs’ meal period and rest period
10 claims. Should Plaintiffs’ meal period and rest period claims fail, these claims would also fail.
11 (Mara Decl., *supra*, at ¶ 23).

12 Defendant contends that even if Plaintiffs were successful in their meal period and rest
13 period claims, they would have to prove Defendant “willfully” failed to pay employees the
14 appropriate wages due upon separation of employment. “A willful failure to pay wages within the
15 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
16 an employee when those wages are due. However, a good faith dispute that any wages are due
17 will preclude imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 §
18 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer presents a
19 defense, based in law or fact, which would preclude any recovery on the part of the employee.
20 The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith
21 dispute did exist.” *Id.* Defendant contends that any failure to pay wages due at the separation of
22 employment was not willful. Defendant argues that it would not be liable for waiting time
23 penalties because a “good faith dispute” exists over the payment of those wages. *See* Cal. Code
24 Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara
25 Decl., *supra*, at ¶ 24).

26 Defendant contends that Plaintiffs would also have to prove that Defendant “knowingly
27 and intentionally” failed to comply with wage statement requirements under Labor Code section
28

226. *Naranjo v. Spectrum Security Services, Inc.* (May 6, 2024, No. S279397) ___Cal.5th___
[2024 Cal. LEXIS 2438, at *3]. Defendant maintains that it reasonably and in good faith believes
that it was providing a complete and accurate wage statement in compliance with California law.
(Mara Decl., *supra*, at ¶ 25).

Defendant also argues that Plaintiffs' meal and rest period claims cannot form the basis of
their wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.*
(2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under California
Labor Code section 226(a) so long as the wage statements correctly reflected the hours worked
and the pay received even if the pay is later determined to be inaccurate. (Mara Decl., *supra*, at ¶
26).

iv. PAGA Penalties

Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain
California Labor Code sections relating to wage and hour violations. The statute of limitations
for PAGA violations goes back one year. As Plaintiffs' PAGA claims are based on the same
alleged unlawful conduct as their class claims, Plaintiffs' PAGA claims are subject to the same
risks on the merits as Plaintiffs' class claims. (Mara Decl., *supra*, at ¶ 27).

Defendant maintains that Plaintiffs' PAGA claims face manageability concerns consistent
with the class certification challenges. Specifically, Defendant has due process rights which
would not permit Plaintiffs to attempt to generalize violations from disparate anecdotal evidence.
Duran v. U.S. Bank National Assn., 59 Cal.4th 1 (2014). Defendant asserts that Plaintiffs cannot
stack multiple PAGA penalties for the same underlying conduct, i.e., failure to pay minimum
wages/failure to pay all wages or overtime. *Plotnik v. Meihaus* (2014) 208 Cal.App.4th 1590,
1612. (Mara Decl., *supra*, at ¶ 28).

The Court may reduce any PAGA penalties awarded under Section 2699, subdivision
(e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the Aggrieved
Employees – assuming liability is proven as to each of Plaintiffs' claims – is higher in this case
where these same individuals may also be receiving money for the same unlawful conduct under

1 the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-
2 cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought
3 are at least partially duplicative of penalties granted by the underlying Labor Code violations, *see*,
4 *e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether
5 and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiffs
6 recognizes that the potential PAGA penalties are highly uncertain.”). As such, the Court will
7 likely reduce any PAGA penalty amount awarded to the Aggrieved Employees. (Mara Decl.,
8 *supra*, at ¶ 29).

9 **IV. TERMS OF THE PROPOSED SETTLEMENT**

10 Under the terms of the settlement, Defendant will create a settlement fund of \$3,000,000.

11 **a. Deductions from the Settlement**

12 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
13 action be settled and compromised for the non-reversionary total sum of \$3,000,000 (“Gross
14 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
15 up to \$1,050,000 (35% of the GSA)⁵ to compensate Class Counsel for work already performed
16 and all work remaining to be performed in documenting the settlement, administering the
17 settlement, and securing Court approval; (b) actual litigation expenses estimated not to exceed
18 \$50,000;⁶ (c) a Class Representative Service Payments to each named class representative in a
19 sum not to exceed \$10,000 each in consideration for prosecuting this class action, serving as Class
20 Representatives, work performed, and risks undertaken for the payment of attorneys’ fees and
21 costs in the event they had been unsuccessful in the matter; (d) settlement administration fees and
22 expenses to ILYM Group, Inc. (“ILYM”), estimated not to exceed approximately \$25,000;⁷ and

23 ⁵ Although Class Counsel seeks attorneys’ fees under the percentage method, Class Counsel
24 will also provide the Court with their lodestar information at final approval.

25 ⁶ These will be tabulated and presented to the Court at final approval. Plaintiffs will only
26 seek the amount of actual costs incurred during the litigation of this case. Should the actual costs
27 be lower than \$50,000, the difference will be added to the Net Settlement Amount for
disbursement to Participating Class Members.

28 ⁷ ILYM 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

(e) \$150,000 allocated to Plaintiffs' claims under the PAGA. Of this payment, 75%, or \$112,500 will be provided to the LWDA, and 25%, or \$37,500, will be available for distribution to Aggrieved Employees.⁸

b. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that \$1,705,000 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members.⁹ Subject to the terms and conditions of the settlement, each Participating Class Member will receive an Individual Class Payment. An Individual Class Payment is calculated by: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each Participating Class Member's Workweeks during the Class Period. (Exhibit 1 at Section C, Paragraph 2(d), Page 7). This payment will be divided into a "wage portion" to compensate Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members for alleged interest and penalties. The wage portion will make up 20% of each Participating Class Members' individual settlement payment, and the non-wage portion will make up 80% of each Participating Class Members' individual settlement payment. (Exhibit 1 at Section C, Paragraph 2(d)(i), Page 7).

Each Aggrieved Employee will receive an Individual PAGA Payment. The Administrator will calculate each Individual PAGA Payment by: (a) dividing the amount of the Aggrieved Employees' twenty-five percent (25%) share of PAGA Penalties (\$37,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods during the PAGA

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.

⁸ Aggrieved Employees are all current and former non-exempt, hourly employees who were employed by Defendant in California at any time during the PAGA Period. (Exhibit 1 at Section A, Paragraph 4, Page 1).

⁹ A Participating Class Member is a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Exhibit 1 at Section A, Paragraph 34, Page 3).

1 Period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
2 Individual PAGA Payment. (Exhibit 1 at Section C, Paragraph 2(e)(i), Pages 7-8). This payment
3 will be treated as 100% penalties.

4 Under no circumstances will any portion of the \$3,000,000 settlement revert to Defendant
5 and 100% of the NSA will be available for payment to Participating Class Members. (Exhibit 1
6 at Section C, Paragraph 1, Page 6). The employer's share of taxes will be paid in addition to and
7 outside of the GSA. (Exhibit 1 at Section C, Paragraph 1, Page 6).

8 **c. Notice to the Class**

9 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
10 the Settlement, Defendant will deliver the Class Data to the Administrator in the form of a
11 Microsoft excel spreadsheet. (Exhibit 1 at Section G, Paragraph 4(a), Page 12). The Class Data
12 includes Class Members' identifying information in Defendant's possession, including the Class
13 Member's: (a) full name; (b) last-known mailing address; (c) social security number; (d) phone
14 number; (e) email address; and (f) number of Workweeks and PAGA Pay Periods. (Exhibit 1 at
15 Section A, Paragraph 8, Page 1).

16 Before mailing Class Notices, the Administrator shall update Class Member addresses
17 using the NCOA. Using best efforts to perform as soon as possible, and in no event later than
18 fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class
19 Members identified in the Class Data the Class Notice via first-class USPS mail. The first page
20 of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
21 and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks
22 and PAGA Pay Periods (if applicable) used to calculate these amounts. (Exhibit 1 at Section G,
23 Paragraph 4(c), Page 12).

24 After notices are mailed, Class Members will have forty-five (45) days to respond to the
25 settlement (this is referred to as the "Response Deadline"). (See Exhibit 1 at Section A, Paragraph
26 42, Page 4). Class Members may respond to the settlement by requesting to be excluded from it
27 or objecting to it as set forth more fully below. Class Members can also file a dispute as to the
28

1 number of workweeks attributed to them as discussed below.

2 **i. Requests for Exclusion**

3 Class Members who wish to exclude themselves (opt out of) the Class Settlement must
4 send the Administrator by fax, email, or mail a signed written Request for Exclusion no later than
5 forty-five (45) calendar days after the Administrator mails the Class Notice (plus an additional 14
6 calendar days for Class Members whose Class Notices are remailed). A Request for Exclusion is
7 a letter from a Class Member or his/her representative that reasonably communicates the Class
8 Member's election to be excluded from the Settlement and includes the Class Member's: (i) full
9 name; (ii) present address; (iii) email address or telephone number; and (iv) a simple statement
10 electing to be excluded from the Settlement. To be valid, a Request for Exclusion must be timely
11 faxed, emailed, or postmarked by the Response Deadline. (Exhibit 1 at Section G, Paragraph 5(a),
12 Page 13).

13 **ii. Objections to the Settlement**

14 Participating Class Members may send signed written objections to the Administrator by
15 fax, email, or mail. The written objection must: (i) indicate what the Class Member is objecting
16 to; (ii) explain why the Class Member is objecting; (iii) include any fact that support the objection;
17 and (iv) include the Class Member's full name, present address, and email address or telephone
18 number. Alternatively, Participating Class Members may appear in Court (or hire an attorney to
19 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
20 Member who elects to send a written objection to the Administrator must do so no later than forty-
21 five (45) calendar days after the Administrator's mailing of the Class Notice (plus an additional
22 14 calendar days for Class Members whose Class Notices are remailed). (Exhibit 1 at Section G,
23 Paragraph 7(b)-(c), Page 14).

24 **iii. Disputes**

25 Each Class Member shall have forty-five (45) calendar days after the Administrator mails
26 the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notices are
27 remailed) to challenge the number of Workweeks and PAGA Pay Periods (if any) allocated to the
28

1 Class Member in the Class Notice. The Class Member may challenge the allocation by
2 communicating with the Administrator via fax, email, or mail. The Administrator must encourage
3 the challenging Class Member to submit supporting documentation. In the absence of any
4 contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA
5 Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class
6 Data. The Administrator's determination of each Class Member's allocation of Workweeks and
7 PAGA Pay Periods shall be final and not appealable or susceptible to challenge. The
8 Administrator shall promptly provide copies of all challenges to the calculation of Workweeks
9 and PAGA Pay Periods to Defense Counsel and Class Counsel along with the Administrator's
10 determination of the challenges. (Exhibit 1 at Section G, Paragraph 6(a), Page 14).

11 **iv. Returned Notices**

12 No later than three (3) business days after the Administrator's receipt of any Class Notice
13 returned by the USPS as undelivered, the Administrator shall remail the Class Notice using any
14 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
15 the Administrator shall conduct a Class Member Address Search and remail the Class Notice to
16 the most current address obtained. (Exhibit 1 at Section G, Paragraph 4(d), Page 12). The
17 deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay
18 Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days
19 beyond the forty-five (45) calendar days otherwise provided in the Class Notice for all Class
20 Members whose Class Notice is remailed. The Administrator will inform the Class Member of
21 the extended deadline with the remailed Class Notice. (Exhibit 1 at Section G, Paragraph 4(e),
22 Page 12).

23 **d. Website**

24 The Administrator will establish and maintain and use a website to post information of
25 interest to Class Members. This information includes the date, time, and location for the Final
26 Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval,
27 Preliminary Approval, Class Notice, motion for Final Approval, motion for Class Counsel Fees
28

1 Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service
2 Payments, Final Approval, and Judgment. The Administrator will also maintain and monitor an
3 email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.
4 (Exhibit 1 at Section G, Paragraph 8(a), Page 15).

5 **e. Distribution of Funds**

6 Defendant shall fund the Gross Settlement Amount by transmitting the funds to the
7 Administrator no later than the Effective Date. (Exhibit 1 at Section D, Paragraph 2, Page 8). The
8 Effective Date is fourteen (14) calendar days after both of the following have occurred: (a) the
9 Court enters a Judgment on its order granting Final Approval of the Settlement; and (b) the
10 Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no
11 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) if
12 one or more Participating Class Members objects to the Settlement, the day after the deadline for
13 filing a notice of appeal from the Judgment; or (iii) if a timely appeal from the Judgment is filed,
14 the day after the appellate court affirms the Judgment and issues a remittitur. (Exhibit 1 at Section
15 A, Paragraph 18, Page 2).

16 Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement
17 Amount, the Administrator will mail checks for all Individual Class Payments, Individual PAGA
18 Payments, LWDA PAGA Payment, Administration Expenses Payment, Class Counsel Fees
19 Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service
20 Payments. Disbursement of the Class Counsel Fees Payment, Class Counsel Litigation Expenses
21 Payment, and Class Representative Service Payments shall not precede disbursement of
22 Individual Class Payments and Individual PAGA Payments. (Exhibit 1 at Section D, Paragraph
23 3, Page 8).

24 The Administrator will issue checks for the Individual Class Payments and/or Individual
25 PAGA Payments and send them to the Class Members via first-class United States Postal Service
26 (“USPS”) mail, postage prepaid. The face of each check shall state checks that are not cashed
27 within one hundred eighty (180) calendar days after the date of mailing will be voided. The
28

1 Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the
2 Administrator must update the recipients' mailing addresses using the NCOA. (Exhibit 1 at
3 Section D, Paragraph 3(a), Page 8).

4 The Administrator will conduct a Class Member Address Search for all other Class
5 Members whose checks are returned undelivered without USPS forwarding address. Within seven
6 (7) calendar days of receiving a returned check, the Administrator will remail checks to the USPS
7 forwarding address provided or to an address ascertained through the Class Member Address
8 Search. (Exhibit 1 at Section D, Paragraph 3(b), Page 9).

9 For any Class Member whose Individual Class Payment check or Individual PAGA
10 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
11 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
12 name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of
13 Code of Civil Procedure section 384, subd. (b). (Exhibit 1 at Section D, Paragraph 3(c), Page 9).

14 **f. Release of Claims**

15 In exchange for an Individual Class Payment, Participating Class Members will agree to
16 the following release:

17 All Participating Class Members, on behalf of themselves and their former and
18 present representatives, agents, attorneys, heirs, administrators, successors, and
19 assigns, release the Released Parties from all claims that were alleged, or
20 reasonably could have been alleged, based on the facts contained in the Operative
21 Complaint and that occurred during the Class Period. Except as set forth in Section
22 E.3. of this Agreement, Participating Class Members do not release any other
claims, including claims for vested benefits, wrongful termination, violation of the
Fair Employment and Housing Act, unemployment insurance, disability, social
security, workers' compensation, or claims based on facts occurring outside the
Class Period.

23 (Exhibit 1 at Section E, Paragraph 2, Page 10).

24 All Aggrieved Employees will agree to the following release in exchange for an Individual
25 PAGA Payment:

26 All Participating and Non-Participating Class Members, who are Aggrieved
27 Employees, are deemed to release, on behalf of themselves and their former and
28 present representatives, agents, attorneys, heirs, administrators, successors, and
assigns, the Released Parties from all claims for PAGA Penalties that were alleged,
or reasonably could have been alleged, based on the facts stated in the Operative

1 Complaint and PAGA Notice that occurred during the PAGA Period.
2 (Exhibit 1 at Section E, Paragraph 3, Page 10).

3 Plaintiffs have agreed to a release of their claims that is broader than the release given by
4 Participating Class Members. (Exhibit 1 at Section E, Paragraph 1, Pages 9-10).

5 V. ARGUMENT

6 a. Class Action Settlements Are Subject to Court Review and Approval Under 7 the California Rules of Court

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

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

15 ...

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

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

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

26 In deciding whether to approve a proposed class action settlement under Code of Civil
27 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
28 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action
settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement

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 after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel
2 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
3 percentage of objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows,
4 all of these elements – with the exception of the percentage of objectors, which cannot be
5 anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are
6 present here and the Court’s grant of preliminary approval is therefore requested.

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

8 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
9 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
10 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s
11 length settlement negotiations until the settlement was reached. The terms of the settlement are
12 memorialized in the Agreement, which is attached to the Declaration of David Mara, Esq. as
13 **Exhibit 1**. While Plaintiffs believe in the merits of their case, they also recognize the inherent
14 risks of litigation and understands the benefit of the class receiving significant settlement funds
15 immediately as opposed to risking continued litigation in achieving class certification, preparing
16 for and conducting a trial, and/or an appeal that may take several more years to litigate.

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

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

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

27 Both Class Counsel and Defense Counsel are particularly experienced in wage and hour
28

1 employment law and class actions. Class Counsel has significant experience in litigating unpaid
2 wages, unprovided meal and rest periods, and wage statement claims. (Mara Decl., *supra*, at ¶¶
3 2-9; Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1). Class Counsel has prosecuted numerous wage and
4 hour class action cases on behalf of employees for California Labor Code violations and thus are
5 experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a
6 fully informed basis, and to evaluate the viability of the defenses. This experience instructed Class
7 Counsel on the risks and uncertainties of further litigation and guided their determination to
8 endorse the proposed settlement.¹¹ Defense Counsel practices labor and employment law and
9 have represented numerous employers in similar types of claims. Accordingly, both Parties’
10 Counsel are experienced in wage and hour employment law and class actions.

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

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

18 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
19 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
20 that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
21 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
22 provided there is a record which allows “an understanding of the amount that is in controversy
23 and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put
24 differently, “as the court does when it approves a settlement as in good faith under Code of Civil
25 Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the

26
27 ¹¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
28 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 ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*
2 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections
3 show, the Parties’ investigation and discovery revealed many reasons to discount claims and agree
4 to this settlement.

5 **1. The Settlement is Fair and Reasonable Based on the Strengths**
6 **of Plaintiffs’ Case and the Risks and Costs of Further**
7 **Litigation**

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

16 Although Plaintiffs believe this case is suitable for certification on the claimed bases that
17 there are company-wide policies that Plaintiffs contend violate California law and uniformly
18 affect the Class Members, Defendant’s counterarguments raise uncertainties with respect to both
19 class certification and success on the merits that had to be taken into account in evaluating
20 settlement. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th
21 319, class certification is always a matter of the trial court’s sound discretion. Decisions following
22 *Sav-On* have reached different conclusions, with respect to certification of wage and hour
23 claims.¹² While remaining confident in the strengths of their claims, evaluating the case from a
24 settlement perspective required – as it always does – compromise and discounting. *See Officers*

25 ¹² *See, e.g., Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees),
27 *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes
28 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 *for Justice v. Civil Serv. Com.* (9th Cir. 1982) 688 F.2d 615, 629 (“The very essence of a
2 settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.”).

3 **2. Potential Exposure on Plaintiffs’ Core Claims**

4 The settlement encompasses approximately 149,892 workweeks.¹³ The average rate of pay
5 is approximately \$28.32 per hour. Plaintiffs’ core claims are for Defendant’s alleged failure to
6 provide lawful meal and rest periods employees.

7 Plaintiffs allege that Defendant failed to provide lawful meal periods to employees because
8 Defendant’s time records show late, short, or the absence of meal periods. The sampling of time
9 records produced shows these occurrences in approximately 12% of shifts. Relying on the
10 California Supreme Court’s decision, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58,
11 Plaintiffs’ claim these records raised a rebuttable presumption that Defendant failed to discharge
12 its duty to provide meal periods. If Plaintiffs were to prevail on this claim for the entire class
13 period, Plaintiffs and the Class Members would be entitled to the following potential damages:
14 **\$1,941,903** (68,571 shifts with meal period violations x \$28.32 per hour = \$1,941,903). (Mara
15 Decl., *supra*, at ¶ 30).

16 Defendant disagrees. It contends its policies communicated to employees comply with
17 California law and will thus be used to rebut the presumption that it did not provide meal periods.
18 Thus, it will argue, the instances in the time records are reflective of employee choice after
19 Defendant has offered and provided the opportunity for meal periods and Defendant does not
20 have to “police meal breaks and ensure no work thereafter is performed.” *Brinker Restaurant*
21 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Should the factfinder side with Defendant,
22 Plaintiffs would take nothing on their meal period claim. Given the all or none prospect, Plaintiffs
23 had to compromise to make settlement possible. (Mara Decl., *supra*, at ¶ 31).

24 Plaintiffs allege that Defendant fails to provide lawful rest periods to employees because
25 Defendant does not provide a net ten-minute rest period to employees whereby the time it takes
26 to get to and from a suitable break area is excluded from total rest period time. Defendant’s
27

28 ¹³ See Exhibit 1 at Section J, Page 17.

1 policies make no mention of an authorization to take a net-ten minute rest break and certainly
2 provide no explanation as to what a “net” ten minute rest period actually means – i.e., more than
3 ten minutes away from workstations. If Plaintiffs were to prevail on this claim, class-wide
4 exposure could be: **\$17,261,606** (609,520 shifts over 3.5 hours x \$28.32 = \$17,261,606). (Mara
5 Decl., *supra*, at ¶ 31).

6 Defendant contends that this amount should be zero because it has a lawful rest period
7 policy and practice. Specifically, Defendant contends its policy permits ten minutes to employees
8 wherein employees are free of all duty and control, which necessarily means employees receive
9 ten minutes in suitable rest areas and does not include the time it takes to get to and from the
10 break room. That aside, Defendant also relies on the California Supreme Court decision, in
11 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, wherein the Court reasoned that
12 rest breaks necessarily only permit employees an ability to go five minutes away from a
13 workstation so that they could get back to their workstations five minutes later. This language,
14 Defendant argues, would mean a net ten-minute rest break is provided when the employee has to
15 be back to work within ten minutes of leaving it. Accordingly, Defendant claims Plaintiffs should
16 take nothing on this claim and, if the factfinder agreed, Plaintiffs would take nothing. Although
17 remaining confident in their position, Plaintiffs had no way of knowing how the factfinder would
18 rule on this issue and a substantial discount had to be given to make settlement possible. (Mara
19 Decl., *supra*, at ¶ 32).

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

21 In light of the all-or-nothing risks their claims faced, Plaintiffs and their Counsel believe
22 that the settlement amount of \$3,000,000 – with an average settlement share amount estimated at
23 \$1,137.42 – is a reasonable and fair settlement amount. (Mara Decl., *supra*, at ¶ 33).

24 It should be noted that a settlement is not judged solely against what might have been
25 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
26 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91
27 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;

1 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by
2 the proposed settlement is substantially narrower than it would be if the suits were to be
3 successfully litigated, this is no bar to a class settlement because the public interest may indeed
4 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
5 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688
6 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the
7 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*
8 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 , (noting that
9 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
10 attorneys’ fees was higher than median percentage for recoveries in shareholder class action
11 settlements, averaging 2.2%-3% from 2002 through 2006).

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

13 Under California law, a class action is appropriate when the class is ascertainable and
14 there is “a well defined community of interest in the questions of law and fact involved affecting
15 the parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California
16 Code of Civil Procedure section 382 for class certification follow federal law according to Rule
17 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’
18 claims, adequacy of representation, predominance of common issues, and superiority. Fed. R.
19 Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should
20 be noted that while a court must certify a class for settlement purposes if a class has not already
21 been certified, “it is well established that trial courts should use different standards to determine
22 the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
23 lesser standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v.*
24 *Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48
25 Cal.App.4th 1794, 1807, fn. 19. Plaintiffs contend, and Defendant does not dispute for settlement
26 purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001)
27 91 Cal. App. 4th 224, 237-38. Plaintiffs seek approval of the following Class for settlement
28

purposes only: all current and former non-exempt, hourly employees who were employed by Defendant in California at any time January 3, 2019, through January 18, 2024.

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

California Rule of Court 3.769(f), provides:

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

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

VI. CONCLUSION¹⁴

Plaintiffs respectfully submit that the proposed settlement is in the best interests of the Class and Class Members, as it is fair, adequate, and reasonable, and one that should be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved. Plaintiffs also respectfully request the Court set a final approval hearing date of January 10, 2025.

MARA LAW FIRM, PC

Date: August 19, 2024

Signed: /s/ David Mara
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiffs

JUSTICE LAW CORPORATION

Date: August 19, 2024

Signed: /s/ Douglas Han
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiffs

¹⁴ Attached hereto as **Exhibit A** is proof of submission of the preliminary approval motion, including the proposed settlement agreement, to the LWDA.