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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIA CEBALLOS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FLAIR CLEANERS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV28196

*[Assigned for all purposes to Hon. Daniel J.
Buckley; Dept. SSC-1]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 25, 2022

Time: 10:30 a.m.

Dept.: SSC-1

Complaint Filed: July 23, 2020

FAC Filed: September 28, 2020

Trial Date: None set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on February 25, 2022 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at
3 312 North Spring Street, Los Angeles, California 90012, Plaintiff Maria Ceballos ("Plaintiff")
4 individually and on behalf of a class of similarly situated individuals, will and hereby does move
5 this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 7 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
8 certification of the following Settlement Class defined as follows:

9 All current and former non-exempt employees who are or were
10 employed by Defendant Flair Cleaners, Inc. in the State of California
11 at any time between April 6, 2016 and December 23, 2021 (the "Class
Period").

- 12 3. Preliminary appointment of Plaintiff Maria Ceballos as Class Representative;
- 13 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Neil M. Larsen of
14 Haines Law Group, APC as Class Counsel;
- 15 5. The scheduling of a hearing to consider whether the Settlement should be finally
16 approved and to permit an enhancement award to Plaintiff, Settlement Administrator
17 costs, and attorneys' fees and costs to Class Counsel;
- 18 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
19 Administrator for mailing notices; and
- 20 7. Approval of the proposed Class Notice and an order that it be disseminated to the
21 proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
2 Authorities, the declarations of Paul K. Haines, Sean M. Blakely, Neil M. Larsen, Plaintiff Maria
3 Ceballos, Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached
4 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
5 evidence or argument presented at the time of hearing.

6
7 Respectfully submitted,

8 Dated: February 1, 2022

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria Ceballos (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) reached with Defendant Flair Cleaners, Inc. (“Flair Cleaners”). The
5 Settlement resolves the class and representative action pending before this Court (the “Action”),
6 in which Plaintiff alleges that Flair Cleaners failed to pay all minimum and overtime wages by
7 virtue of its unlawful timekeeping policies and/or practices, failed to provide all legally-compliant
8 meal periods or make meal period premium payments in lieu thereof, and failed to authorize and
9 permit all legally-compliant rest periods or make rest period premium payments in lieu thereof.
10 Plaintiff further alleges that as a result of these violations, Flair Cleaners failed to issue accurate
11 itemized wage statements, failed to timely pay all final wages, and is liable for civil penalties
12 under the Labor Code Private Attorneys General Act (“PAGA”).

13 Plaintiff now respectfully request that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,¹ in which Flair Cleaners has agreed to pay
15 Five Hundred Forty Thousand Dollars and Zero Cents (\$540,000.00) to the following Settlement
16 Class:

17 All current and former non-exempt employees who are or were employed
18 by Defendant Flair Cleaners, Inc. in the State of California at any time
19 between April 6, 2016 and December 23, 2021 (the “Class Period”).

20 The Settlement was only reached after extensive informal discovery, and a full-day
21 mediation with Todd A. Smith, Esq., a well-respected wage and hour class action mediator. Prior
22 to the mediation, Flair Cleaners produced timekeeping and payroll records for a sampling of the
23 putative class, as well as applicable documents regarding Flair Cleaners’ wage and hour policies,
24 and other information. After extensive research and analysis, including Plaintiff’s detailed
25 analysis of Flair Cleaners’ potential exposure, a full-day mediation was held on April 28, 2021.

26
27 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Paul K. Haines as
28 Exhibit A. The proposed Class Notice and Notice of Estimated Settlement Award are attached as
Exhibits 1 and 2, respectively, to the Settlement. All defined terms in this motion have the same
definition as that in the Settlement.

At the conclusion of mediation, Mr. Smith issued a mediator’s proposal to resolve all of the claims alleged in Plaintiff’s operative complaint, which both sides ultimately accepted.

If the Settlement is approved, Flair Cleaners will pay a non-reversionary Gross Settlement Amount of \$540,000.00. After deducting settlement administration costs, Plaintiff’s requested enhancement award, payment of PAGA penalties to the Labor and Workforce Development Agency (“LWDA”), and attorneys’ fees and costs, the remaining Net Settlement Amount (“NSA”) will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period. Former employees with standing for waiting time penalties, and employees with standing for wage statement and PAGA civil penalties (subject to a 1-year statute of limitations) will also receive consideration for their release of these penalty claims.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement, as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 371 Settlement Class members, and the average payment to participating Settlement Class members is projected to be approximately \$798.52. This is a favorable result for Settlement Class members, who will be agreeing to a release of only those claims that were asserted in this litigation.

The proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES AND BRIEF PROCEDURAL HISTORY

Flair Cleaners is a dry-cleaning service serving both individuals and businesses, offering dry cleaning services, tailoring, and wash and fold laundry services. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 9. Plaintiff worked for Flair Cleaners as a non-exempt Machine Operator/Shirt Presser from approximately May 2012 until about November 12, 2019. *See*

1 Declaration of Maria Ceballos (“Ceballos Decl.”), ¶ 2.

2 On July 23, 2020, Plaintiff filed her Class Action Complaint in Los Angeles County
3 Superior Court alleging causes of action for: (1) minimum wage violations; (2) failure to pay all
4 overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement
5 violations; (6) waiting time penalties; and (7) unfair competition in violation of California
6 Business & Professions Code § 17200, *et seq.* Haines Decl., ¶ 10. On September 28, 2020,
7 Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”)
8 to add a cause of action for civil penalties under the Private Attorneys General Act (“PAGA”).
9 *Id.*

10 **B. PLAINTIFF’S CLAIMS AND FLAIR CLEANERS’ DEFENSES**

11 **1. Unpaid Overtime Based on Miscalculation of the “Regular Rate”**

12 Plaintiff alleges that Flair Cleaners paid its non-exempt employees non-discretionary
13 incentive pay but failed to include these payments in employees’ “regular rate” of pay when
14 calculating overtime compensation, and underpaid employees’ overtime wages as a result. Haines
15 Decl., ¶ 15. Specifically, Plaintiff contends Flair Cleaners paid Settlement Class members
16 bonuses denoted as “B Bonus” and “AB Annual Bonus,” but failed to include these payments
17 when calculating the regular rate of pay for overtime purposes. *Id.*

18 However, Flair Cleaners contends that the bonuses at issue were discretionary and
19 therefore excludable from the “regular rate.” *Id.*; *see also* 29 C.F.R. § 778.208 (discretionary
20 bonuses excludable from regular rate). Flair Cleaners further argues that Settlement Class
21 members received different types of bonuses and other remuneration throughout the Class Period,
22 creating substantive differences among Settlement Class members with respect to the incentives
23 received, making class certification unlikely. Haines Decl., ¶ 15.

24 **2. Meal Period Claims**

25 Plaintiff alleges that Flair Cleaners failed to provide legally-compliant first meal periods,
26 such that first meal periods were regularly short and often commenced after the completion of the
27 fifth hour of work, and that this is reflected in employee timekeeping records that show many
28 such non-compliant meal periods. Haines Decl., ¶ 16. Plaintiff alleges that from July 23, 2016 to

June 28, 2018, Flair Cleaners’ written meal period policy was facially defective in that it did not contain a timing requirement for first meal periods. *Id.* Specifically, Flair Cleaners’ meal period policy during this time period stated, “Meal periods are scheduled to accommodate operating requirements,” and as a result, Plaintiff alleges that first meal periods were often provided after the completion of five hours of work. *Id.* Plaintiff further alleges Flair Cleaners’ written meal period policy for a portion of the Class Period failed to provide legally-compliant second meal periods on shifts in excess of 10.0 hours. *Id.*, at ¶ 17.

However, Flair Cleaners contends that it provided all legally-compliant meal periods to Settlement Class members. Haines Decl., ¶ 16. Flair Cleaners also argues that under *Brinker*, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; see *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only have to “provide” employees the opportunity to take meal periods). Flair Cleaners also maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 16. With respect to second meal periods, Flair Cleaners argues that second meal periods may lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512. *Id.*, at 17. Lastly, Flair Cleaners argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making certification of this claim unlikely. *Id.*, at ¶¶ 16-17.

3. Rest Period Claims

Plaintiff alleges that Flair Cleaners’ written rest period policy failed to authorize and permit second rest periods on shifts between 6.01-6.99 hours and third rest periods on shifts in excess of 10.0 hours. Haines Decl., ¶ 18. Specifically, Flair Cleaners’ written rest period policy in effect for a portion of the Class Period provided for only one 15-minute rest period during shifts that were between 5.0 up to 7.0 hours in length, and only two 15-minute rest periods for shifts that were greater than 7.0 hours. *Id.*

However, Flair Cleaners argues that it has always maintained and enforced lawful rest

1 period practices during the Class Period, and has, in fact, authorized and permitted all required
2 rest periods to Class members. *Id.* Additionally, Flair Cleaners maintains that any failure to take
3 a second or third rest period was the result of employee choice. *Id.* Flair Cleaners also asserts this
4 claim is not amenable to class treatment as individualized inquiries would be required to
5 determine which employees failed to take a second or third rest period, and the reasons why. *Id.*
6 Flair Cleaners also contends that manageability concerns are especially present with respect to
7 rest period claims, since rest periods are not recorded. *Id.*

8 **4. Claim for Unpaid Wages Due to Rounding**

9 Plaintiff contends that Flair Cleaners underpaid Settlement Class members due to its
10 allegedly unlawful rounding practice. Haines Decl., ¶ 19. However, Plaintiff’s analysis of Flair
11 Cleaners’ timekeeping and payroll records revealed that, at most, employees were underpaid due
12 to rounding on a minority of shifts (approximately 49%) and that overall, approximately 51% of
13 time entries were either neutral or rounded in favor of employees. *Id.* Flair Cleaners further argues
14 that its rounding practices was lawful, since it was both neutral on its face and resulted, over time,
15 in employees being paid for all hours worked. *Id.*; see also *See’s Candy Shops, Inc. v. Superior*
16 *Court*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if employer “applies a consistent
17 rounding policy that, on average, favors neither overpayment nor underpayment.”). Flair Cleaners
18 also contends that multiple Courts of Appeal have found rounding mechanisms to be lawful under
19 similar circumstances. See, e.g., *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239,
20 1254 (2019) (review granted on other grounds) (affirming summary judgment for employer on
21 rounding claim where employees were underpaid on 54.6% of shifts, finding that such facts do
22 not establish that employees were “systematically undercompensate[d]”); *AHMC Healthcare,*
23 *Inc. v. Superior Court*, 24 Cal.App.5th 1014, 1028 (2018) (affirming summary judgment for
24 employer where “bare majority” of employees were underpaid due to rounding).

25 **5. Claims Under Labor Code §§ 203, 226, and the PAGA**

26 As a result of the unpaid wages and unpaid meal and rest period premiums discussed
27 above, Plaintiff asserts that Flair Cleaners failed to comply with its final payment and wage
28 statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶

20-21. Finally, Plaintiff seeks civil penalties under the PAGA based on the aforementioned claims. Haines Decl., ¶ 22.

Flair Cleaners argues that it possesses strong, good faith defenses to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties, which are only available for the "willful" failure to pay wages. Haines Decl., ¶ 20; *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" over employee's exempt status precluded imposition of waiting time penalties over contested wages). Flair Cleaners further contends Plaintiff's meal and rest period claims cannot support waiting time or wage statement penalties, as a Court of Appeal recently held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th. 444, 473-75 (2019) (*review granted* Jan. 2, 2020) Haines Decl., ¶ 20.

In addition, Flair Cleaners argues that any alleged wage statement violations were not "knowing and intentional," and that Plaintiff cannot show she or other employees "suffer[ed] injury" due to alleged wage statement violations, as required to recover penalties under Section 226(e). Haines Decl., ¶ 21. Further, Flair Cleaners contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer's "commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received...The purpose of section 226 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (*italics in original*). Flair Cleaners further argues the same defenses to class certification as to Plaintiff's underlying claims apply equally to his derivative waiting time and wage statement claims. Haines Decl., ¶¶ 20-21.

Finally, Flair Cleaners asserts that the PAGA claim fails because Plaintiff's underlying claims fail. Haines Decl., ¶ 22; *see also Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Additionally, Flair Cleaners maintains that, given its good-faith defenses, the Court would substantially reduce any PAGA civil penalties if it were to find Flair Cleaners liable for any of

Plaintiff's claims. Haines Decl., ¶ 22; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties) (*disapproved on other grounds* in *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, FN8 (2019)); *Fleming v. Covidien, Inc.*, No. ED-CV-10-01487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

Prior to mediation, the parties engaged in significant informal discovery, including Flair Cleaners' production of an approximate 20% random sampling of timekeeping and payroll data for the putative class, all relevant wage and hour written policies, and other relevant data and information. Haines Decl., ¶ 11. Flair Cleaners also produced a "class list" with Settlement Class members' hire and termination dates (if applicable). *Id.* Plaintiff conducted a comprehensive analysis and extrapolation of the timekeeping and payroll data to calculate Flair Cleaners' potential exposure for each of Plaintiff's claims. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Flair Cleaners' potential defenses. *Id.*

On April 28, 2021, the parties participated in a full-day mediation with Todd A. Smith, Esq., a well-respected wage and hour class action mediator. Haines Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of mediation, Mr. Smith issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by all Parties and documented in a Memorandum of Understanding ("MOU"). *Id.* During the months that followed, the Parties negotiated and finalized the long-form Settlement Agreement now before this Court. *Id.*

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1 **III. THE PROPOSED SETTLEMENT**

2 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

3 If the Court preliminarily approves the Settlement, Flair Cleaners will pay a Gross
4 Settlement Amount (“GSA”) of \$540,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement
5 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
6 an individual Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically
7 receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.*

8 The monetary terms of the Settlement are summarized below:

- 9
- | | |
|---|----------------------------|
| • Gross Settlement Amount (“GSA”): | \$540,000.00 |
| • Minus Court-approved attorneys’ fees (up to 1/3): | \$180,000.00 |
| • Minus Court-approved verified costs (up to): | \$25,000.00 |
| • Minus Court-approved Enhancement Award: | \$7,500.00 |
| • Minus Amount Set Aside as PAGA penalties: | \$30,000.00 |
| • <u>Minus estimated settlement administration costs (up to):</u> | <u>\$8,750.00</u> |
| Net Settlement Amount (“NSA”): | \$288,750.00 |
| • PLUS 25% “PAGA Amount” to Settlement Class: | \$7,500.00 |
| • <u>Total Amount Paid to Settlement Class members:</u> | <u>\$296,250.00</u> |
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15 **1. The Settlement Provides for Reasonable Monetary Payments**

16 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
17 Representative Enhancement Award to Plaintiff, payment to the LWDA, and Settlement
18 Administrator costs, the Settlement requires Flair Cleaners to pay a Net Settlement Amount
19 (“NSA”) of at least \$288,750.00 to all Settlement Class members who do not timely opt out. *See*
20 Settlement, ¶¶ 3-4. Seventy-Five percent (75%) of the NSA shall be distributed to all participating
21 Settlement Class members based on the proportionate number of workweeks each participating
22 Settlement Class member worked during the Class Period. Settlement, ¶ 4(B)(i). Fifteen percent
23 (15%) of the NSA shall be designated as the “Waiting Time Amount” and will be distributed in
24 equal, pro-rata shares to each participating Settlement Class member who separated their
25 employment with Flair Cleaners at any time from April 6, 2017 through the end of the Class
26 Period (December 23, 2021). *Id.*, at ¶ 4(B)(ii). Ten percent (10%) of the NSA shall be designated
27 as the “Wage Statement Amount” and will be paid to each participating Settlement Class member
28 based on the proportionate number of workweeks worked from April 6, 2019 through the end of

1 the Class Period. *Id.*, at ¶ 4(B)(iii). Finally, Seven Thousand Five Hundred Dollars and Zero Cents
2 (\$7,500.00) shall be designated as the “PAGA Amount,” and shall be distributed to Settlement
3 Class members (regardless of whether they opt-out) proportionately based on the number of
4 workweeks worked at any time from July 23, 2019 through the end of the Class Period (“PAGA
5 Period”). *Id.*, at ¶ 4(B)(iv).

6 According to Flair Cleaners, there are approximately 371 total Settlement Class members.
7 Haines Decl., ¶ 14. Therefore, the average Settlement Award is projected to be approximately
8 \$798.52. *Id.* Settlement Class members will have sixty (60) calendar days from the mailing of the
9 Notice Packet to opt-out or object to the Settlement, thereby providing ample time to review the
10 Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C)-(D). Those
11 Settlement Class members who do not opt-out of the Settlement will be bound by its terms and
12 will release all claims against Flair Cleaners included within the Settlement. *See Id.*, at ¶ 2(A). In
13 addition, all Settlement Class members (whether or not they opt out) who worked for Flair
14 Cleaners during the PAGA Period will release all related PAGA claims against Flair Cleaners
15 during the PAGA Period (“PAGA Released Claims”). *Id.* Plaintiff has also agreed to a general
16 release of claims, including a waiver of Cal. Civil Code § 1542. *Id.*, ¶ 2(B).

17 Settlement Award checks will be valid for 180 days after issuance. *See* Settlement, ¶ 4(F).
18 After 180 days, funds from uncashed checks will be distributed to Baby2Baby as a *cy pres*
19 beneficiary. *Id.* Baby2Baby is a nonprofit organization dedicated to providing children living in
20 poverty with diapers, clothing, and other basic necessities.

21 Lastly, Flair Cleaners’ share of employer-side payroll taxes will be paid by Flair Cleaners
22 separate, and in addition to, the GSA. *See* Settlement, at ¶ 3(E).

23 **2. Attorneys’ Fees and Costs, Enhancement Award, and LWDA Payment**

24 Plaintiff will separately apply for a Class Representative Enhancement Award at the time
25 of seeking final approval of the proposed Settlement in the amount of \$7,500, for her services to
26 the Settlement Class. *See* Settlement, ¶¶ 3(D)(3), 6. “[I]ncentive awards are fairly typical in class
27 action cases . . . and are intended to compensate class representatives for work done on behalf of
28 the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In*

1 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
2 briefed at the time of final approval, Plaintiff’s requested enhancement award is intended to
3 recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including
4 providing substantial factual information and documents to Class Counsel, attending multiple
5 meetings with Class Counsel to discuss the claims and theories at issue in the litigation, actively
6 participating in the prosecution of her claims, as well as the significant risks Plaintiff undertook
7 by agreeing to serve as the named Plaintiff in this case, and the fact that Plaintiff agreed to a
8 general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement, ¶¶ 2(B), 6;
9 Ceballos Decl., ¶ 3.

10 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
11 Settlement Amount, which is currently estimated to be \$180,000.00, and up to \$25,000.00 in
12 verified costs reimbursement. *See* Settlement, ¶¶ 3(D)(4), 5; *see also* Haines Decl., ¶ 24. Plaintiff
13 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
14 time-consuming litigation on a purely contingent fee basis. Haines Decl., ¶ 24. Class Counsel has
15 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s
16 claims, conducting legal research, engaging in informal written discovery, analyzing Settlement
17 Class members’ payroll and timekeeping records, conducting a detailed statistical analysis and
18 extrapolation of the timekeeping and payroll records Flair Cleaners produced in order to develop
19 a comprehensive damages model, preparing for and attending mediation, negotiating and
20 preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating
21 the case. *Id.* Class Counsel expects to expend additional attorney time in attending the hearing on
22 this Motion, overseeing the Notice process and fielding questions from Settlement Class
23 members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

24 California courts recognize an appropriate method for awarding attorneys’ fees in class
25 actions is to award a percentage of the “common fund” created as a result of a settlement. *See*
26 *e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of fund
27 method survives in California class action cases”). Class Counsel’s request for fees of one-third
28 of the Gross Settlement Amount is well within the range of reasonableness, and indeed is

1 considered the typical rate for common fund settlements. Historically, courts have awarded
2 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4
3 Newberg on Class Actions § 14.6 (4th Ed. 2013).

4 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
5 overall percentage of the Settlement and in light of the substantial risks and significant work
6 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
7 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
8 and verified costs upon seeking final approval.

9 Additionally, the parties have agreed to designate \$30,000.00 of the GSA as PAGA civil
10 penalties, of which \$22,500.00 (75%) will be paid to the LWDA, with the remaining \$7,500.00
11 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated
12 per Labor Code § 2699(i). *See* Settlement, ¶ 3(D)(5). Plaintiff submits this allocation to the
13 LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*
14 (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment
15 of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*
16 (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of
17 \$7,500 to LWDA out of \$1.25 million common-fund settlement).

18 **IV. ARGUMENT**

19 **A. PRELIMINARY APPROVAL IS WARRANTED**

20 California Rule of Court 3.769 conditions settlement of a class action on court approval,
21 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
22 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
23 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and
24 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
25 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
26 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly
27 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
28 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the

1 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
2 presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class
3 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
4 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

5 **1. Standard for Preliminary Approval**

6 To make a fairness determination, the Court should consider several factors, including:
7 "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further
8 litigation, the risk of maintaining class action status through trial, the amount offered in
9 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
10 experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
11 "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
12 the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*, 91
13 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
14 reasonable in light of the overall balance of factors in this case.

15 **a. The Strength of Plaintiff's Case**

16 Although Plaintiff steadfastly maintain that her claims are meritorious, Plaintiff
17 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
18 described above in section II.B., *supra*, Flair Cleaners presented multiple defenses to Plaintiff's
19 claims, both on the merits and with respect to class certification. Thus, while Plaintiff was
20 prepared to litigate these claims through class certification, and ultimately trial, success was far
21 from certain.

22 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

23 Although the parties engaged in significant informal discovery in advance of mediation,
24 the parties still had substantial discovery to complete in formal litigation had the matter not
25 settled. Haines Decl., ¶ 25. This would have required expenditure of substantial time and
26 resources by both parties that would have very likely spanned several years. *Id.* Even if Plaintiff
27 were to certify the classes, the parties would incur considerably more attorney's fees and costs
28 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids

1 those risks and the accompanying expense. *Id.*

2 **c. Risk of Maintaining Class Action Status**

3 Plaintiff had not yet filed her motion for class certification, and as such, the extent to
4 which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement,
5 there was a risk that there would not be a certified class at the time of trial, or if there were, it
6 would consist of a significantly smaller group of employees than the proposed Settlement Class
7 (either due to a narrowing of the class definition in a Court order on a contested motion for class
8 certification, or through settlement agreements entered into by Flair Cleaners with individual class
9 members by way of *Pick-Up-Stix* type settlement agreements²) and the expected recovery could
10 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
11 *Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

12 **d. Amount Offered in Settlement Given Realistic Value of Claims**

13 The Settlement provides a positive recovery for the Settlement Class in the face of
14 disputed claims. Plaintiff conducted a detailed analysis of the underpaid wages due to Flair
15 Cleaners alleged regular rate miscalculations, meal and rest period premiums owing, wage
16 statement penalties, waiting time penalties, and civil penalties under the PAGA. The results of
17 the damages analysis are discussed below:

18 **Unpaid Overtime Wages Due to Regular Rate Violations: \$15,176**

19 Plaintiff alleges that Flair Cleaners paid its non-exempt employees non-discretionary
20 incentive pay but failed to include these payments in employees' "regular rate" of pay when
21 calculating overtime compensation, and underpaid employees' overtime wages as a result. Haines
22 Decl., ¶ 15. Based on Plaintiff's analysis and extrapolation of payroll data provided by Flair
23 Cleaners, Plaintiff calculated that Settlement Class members were underpaid by approximately
24

25 _____
26 ² In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

1 \$25,294 in overtime wages during the Class Period as a result of Flair Cleaners’ alleged failure
2 to properly calculate the “regular rate” of pay. *Id.*

3 However, as discussed above, Flair Cleaners contends that the bonuses at issue were
4 discretionary and therefore excludable from the “regular rate.” *Id.* Flair Cleaners further argues
5 that Settlement Class members received different types of bonuses and other remuneration
6 throughout the Class Period, creating substantive differences among Settlement Class members
7 with respect to the incentives received, making class certification unlikely. *Id.* Thus, Plaintiff
8 discounted the estimated maximum by 20% for risk of non-certification, and by an additional
9 25% to account for risk of losing on the merits or failure to recover the full amount sought, to
10 arrive at an estimated exposure of approximately \$15,176. *Id.*

11 First Meal Period Violations: \$120,365

12 Plaintiff alleges that Flair Cleaners failed to provide timely 30-minute meal periods before
13 the conclusion of the fifth hour of work. Haines Decl., ¶ 16. Based on Plaintiff’s review and
14 extrapolation of the timekeeping data produced by Flair Cleaners, 39,490 shifts during the Class
15 Period reflected a late, short, and/or missed first meal period *Id.* In addition, based on data
16 provided by Flair Cleaners, Settlement Class members’ average hourly rate of pay during the
17 Class Period was \$15.24 per hour. *Id.* Therefore, assuming each late, short, and/or missed meal
18 period reflected in the timekeeping records would result in a violation, Plaintiff calculated Flair
19 Cleaners’ maximum exposure on this claim at approximately \$601,827 (39,490 non-compliant
20 meal periods * \$15.24 average meal period premium). *Id.*

21 However, as noted above, Flair Cleaners contends that it provided compliant meal periods
22 to Settlement Class members throughout the Class Period. Haines Decl., ¶ 16. Flair Cleaners also
23 asserts that under *Brinker* it is only required to “provide” the opportunity to take meal periods,
24 not “ensure” meal periods are taken, and that, as described above, it has always done so, and any
25 non-compliant first meal periods in the timekeeping records were the result of employee choice.
26 *Id.*; see also *Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard and holding employers
27 only have to “provide” employees the opportunity to take meal periods). Finally, Flair Cleaners
28 maintains that the first meal period claim is not suited for class certification, since individual

1 inquiries would be needed to assess which employees took non-compliant meal periods or missed
2 meal periods, how many meal periods were non-compliant or missed, and the reasons why a
3 particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these
4 defenses and arguments, Plaintiff discounted Flair Cleaners' maximum exposure by 50% for the
5 risk of non-certification, and an additional 60% to account for Flair Cleaners' defenses on the
6 merits, to arrive at an estimated total of approximately \$120,365. *Id.*

7 Second Meal Period Violations: \$15,045

8 Plaintiff's analysis of the timekeeping data revealed that there were approximately 8,227
9 shifts in excess of 10.0 hours without a compliant second meal period during the Class Period.
10 Haines Decl., ¶ 17. Therefore, Plaintiff calculated Flair Cleaners' maximum exposure for this
11 claim at approximately \$125,379 (8,227 shifts with non-compliant second meal periods * \$15.24
12 average meal period premium). *Id.*

13 However, Flair Cleaners argues that it has maintained compliant meal period practices
14 throughout the Class Period, that under *Brinker* it is only required to "provide" the opportunity to
15 take second meal periods, and that any missed second meal periods were the result of lawful
16 employee waiver or choice. *Id.* Flair Cleaners also contends that Settlement Class members
17 voluntarily waived their second meal periods on shifts in excess of 10.0 hours but less than 12.0
18 hours, as they are entitled to do pursuant to Labor Code § 512. *Id.* Flair Cleaners also contends
19 that class certification would not be proper as individualized inquiries will be required to
20 determine why each second meal period was missed, and whether there was a valid waiver. *Id.* In
21 light of these arguments and defenses, Plaintiff discounted the maximum amount that the class
22 could potentially recover for second meal periods by 60% for a risk of non-certification, and an
23 additional 70% for a risk of losing on the merits, or having exposure reduced due to Flair
24 Cleaners' waiver arguments, to arrive at an estimated exposure amount of approximately \$15,045.
25 *Id.*

26 Rest Period Violations: \$67,700

27 Plaintiff alleges that Flair Cleaners failed to authorize and permit second rest periods on
28 shifts between 6.01-6.99 hours and third rest periods on shifts in excess of 10.0 hours. Haines

Decl., ¶ 18. Within these parameters, Plaintiff's analysis of Flair Cleaners' timekeeping data revealed that there were approximately 11,846 shifts with potential non-compliant rest periods. *Id.* Therefore, Plaintiff calculated Flair Cleaners' maximum exposure on this claim at approximately \$180,533 (11,846 rest period violations * \$15.24 premium). *Id.*

However, as stated above, Flair Cleaners contends that it maintained legally-compliant rest period practices throughout the Class Period, and in fact, authorized and permitted all rest periods to Settlement Class members. *Id.* Flair Cleaners also argues that any failure to take rest periods was the result of employee choice. *Id.* Flair Cleaners also asserts that this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, and the reasons why. *Id.* Flair Cleaners further maintains that manageability concerns are especially present with respect to Plaintiff's rest period claim, given that rest periods are not recorded. *Id.* In light of these defenses, Plaintiff discounted Flair Cleaners' maximum exposure by 25% to account for the risk of non-certification, and an additional 50% to account for Flair Cleaners' defenses on the merits, to arrive at an estimated exposure of approximately \$67,700. *Id.*

Unpaid Wages Due to Rounding: \$3,644

Based on Plaintiff's review of employee timekeeping records, Plaintiff contends that Flair Cleaners' rounding practice resulted in approximately 332 net hours of unpaid wages. Haines Decl., ¶ 19. Thus, and based upon the average rate of pay during the Class Period, Plaintiff estimates that Flair Cleaners' maximum exposure for this claim is approximately \$10,119 (332 hrs. * 15.24 * 2 (liq. Damages per Labor Code §1194.2)). *Id.* But as noted above, Flair Cleaners raised several defenses to this claim, including its argument that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked; that some employees were overpaid as a result its rounding practice; that employees did not perform any work before the scheduled start of their shifts; and that Plaintiff would be unable to certify this claim given the individualized inquiries as to whether employees were in fact underpaid, or overpaid for each workday in question. *Id.* Specifically, Plaintiff's investigation revealed that, at most, employees were underpaid due to rounding on a minority of shifts

1 (approximately 49%) and that overall, approximately 51% of time entries were either neutral or
2 rounded in favor of employees. *Id.* Based on these defenses, Plaintiff discounted the maximum
3 exposure by 40% to account for the risk of non-certification, and an additional 40% to account
4 for Flair Cleaners' defenses on the merits, to arrive at an estimated exposure of approximately
5 \$3,644. *Id.*

6 **Waiting Time Penalties: \$171,879**

7 Plaintiff alleges Flair Cleaners is liable for waiting time penalties under Labor Code § 203
8 to former employees whose employment with Flair Cleaners ended since April 6, 2017. Haines
9 Decl., ¶ 20. Flair Cleaners' records reflected approximately 235 former Settlement Class members
10 who separated their employment with Flair Cleaners since April 6, 2017. *Id.* Plaintiff estimates
11 an average waiting time penalty of \$3,657 (\$15.24 * 8 hours per day * 30 days). *Id.* Therefore,
12 Plaintiff estimated Flair Cleaners' maximum waiting time penalty exposure at approximately
13 \$859,395 (235 former employees * \$3,657 penalty). *Id.*

14 However, Flair Cleaners argues that it possesses strong, good faith defenses to Plaintiff's
15 underlying claims, thus precluding recovery of waiting time penalties, which are only available
16 for the "willful" failure to pay wages. Haines Decl., ¶ 20; *see also* 8 Cal. Code Regs. § 13520 (a
17 "good faith dispute that any wages are due will preclude imposition of waiting time penalties");
18 *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" over
19 employee's exempt status precluded imposition of waiting time penalties over contested wages).
20 Flair Cleaners further contends Plaintiff's meal and rest period claims cannot support waiting
21 time penalties. Haines Decl., ¶ 20. Moreover, because the waiting time claim is derivative of
22 Plaintiff's underlying wage claims, Plaintiff would need to overcome Flair Cleaners' defenses,
23 both as to class certification and as to the merits, to her underlying claims. *Id.* Based on these
24 defenses, Plaintiff discounted Flair Cleaners' maximum exposure by 50% for risk of non-
25 certification, and an additional 60% for risk of being unsuccessful on the merits or failure to
26 recover the full amount sought, to arrive at an estimated total of approximately \$171,879. *Id.*

27 **Wage Statement Penalties: \$96,820**

28 Plaintiff's analysis reflected that there were approximately 9,682 pay periods worked by

1 Settlement Class members within the liability period applicable to Plaintiff's wage statement
2 claim. Haines Decl., ¶ 21. In calculating Flair Cleaners' exposure, Plaintiff gave Flair Cleaners
3 the benefit of assuming Plaintiff could only obtain the "initial" wage statement violation rate of
4 \$50 per pay period, for a total of approximately \$484,100 (9,682 pay periods * \$50 "initial"
5 penalty) in potential penalties. *Id.*; *see also* Lab. Code 226(e) (\$50 penalty for "initial" violations);
6 *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (finding "initial" violation rate
7 applies for civil penalties until employer has been notified it is violating the Labor Code); *Patel*
8 *v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and
9 applying "initial" \$50 penalty to all pay periods in calculating amount-in-controversy for wage
10 statement claim). As discussed above, Flair Cleaners argues any alleged wage statement
11 violations were not "knowing and intentional," that Plaintiff cannot show she or other employees
12 "suffer[ed] injury," that wage statement penalties are not recoverable for meal and rest period
13 violations, that wage statements always included the actual amounts *paid* to employees, and that
14 this claim is not amenable for class certification for the same reasons as Plaintiff's underlying
15 claims. Haines Decl., ¶ 21. Thus, Plaintiff discounted the maximal exposure by 50% for risk of
16 non-certification, and by an additional 60% for risk of being unsuccessful on the merits, to arrive
17 at an estimated realistic total of approximately \$96,820. *Id.*

18 **PAGA Penalties: \$96,820**

19 Plaintiff's analysis reflected there were approximately 9,682 pay periods worked in the
20 PAGA Period (i.e., July 23, 2019 through the end of the Class Period). Therefore, Plaintiff
21 estimated a maximum total PAGA exposure of approximately \$968,200 (9,682 pay periods *
22 \$100 "initial" penalty). Haines Decl., ¶ 22; *see also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
23 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is
24 violating a Labor Code provision).

25 However, these penalties derive from the underlying wage and hour violations discussed
26 above, which Flair Cleaners vigorously disputes. Haines Decl., ¶ 22; *see e.g., Green v. Lawrence*
27 *Service Co.*, 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success
28 was determined by the merits of its underlying claims). Flair Cleaners also asserts that, given its

1 good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA
2 penalties if it were to find Flair Cleaners liable for any of Plaintiff's claims. Haines Decl., ¶ 22;
3 *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming
4 reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx)
5 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties from \$2.8 million to
6 \$500,000). Therefore, based on these risks, Plaintiff discounted the maximum figure by 60% for
7 risk of losing on the merits, and an additional 75% to account for the possibility of this Court
8 reducing penalties, to arrive at an estimated exposure of approximately \$96,820. Haines Decl., ¶
9 22.

10 Using these estimated figures for each of the claims described above, Plaintiff calculates
11 a maximum potential recovery to be approximately \$587,449. Haines Decl., ¶ 23. The proposed
12 settlement of \$540,000 therefore represents approximately 91.9% of the reasonably forecasted
13 recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement
14 will provide significant monetary relief to the Settlement Class, which is consistent with what
15 Plaintiff's counsel believes could have been recovered had the case proceeded through trial.

16 **e. The Experience and Views of Counsel**

17 "Parties represented by competent counsel are better positioned than courts to produce a
18 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
19 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995) . Here, Plaintiff is represented
20 by competent, experienced counsel who possess extensive experience prosecuting and defending
21 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
22 alleging similar claims. *See* Haines Decl., ¶¶ 2-7; Declaration of Sean M. Blakely ("Blakely
23 Decl."), ¶¶ 2-6; Declaration of Neil M. Larsen ("Larsen Decl."), ¶¶ 2-4. Class Counsel conducted
24 an in-depth review of Flair Cleaners' timekeeping and payroll records, and drew on their
25 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case.
26 *See* Haines Decl., ¶ 11. The Settlement was also reached with the assistance of a well-respected
27 wage-and-hour class action mediator. *Id.* This factor strongly supports preliminary approval of
28 the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

1 **2. The Preliminary Approval Standard Is Met**

2 At this stage, the Court can grant preliminary approval of the settlement and direct that
3 notice be given if the proposed settlement: (1) falls within the range of possible approval; (2)
4 appears to be the product of serious, informed and non-collusive negotiations; and (3) has no
5 obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
6 Class Actions § 11:24-25 (4th Ed. 2013).

7 **a. The Settlement Is Within the Range of Possible Approval**

8 The proposed settlement reflects approximately 91.9% of the estimated recovery the
9 Settlement Class could reasonably expect in light of the significant litigation risks, and will
10 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
11 percentage of the liability exposure recovered in this case far exceeds percentages routinely
12 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
13 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
14 damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement
15 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
16 *Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may
17 be acceptable even though it amounts to only a fraction of the potential recovery that might be
18 available to the Settlement Class members at trial”).

19 Further, the average Settlement Award of approximately \$798.52 is in line with average
20 payments achieved in other wage and hour class action settlements.³ Thus, Plaintiff submits that
21

22 ³ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
23 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
24 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
25 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
26 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
27 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
28 of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange
County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
Salon, Inc., Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average

1 the proposed settlement is within the range of possible approval, such that notice should be
2 provided to the Settlement Class members so that they can consider the Settlement. The Court
3 will have the opportunity to again assess the reasonableness of the Settlement after the Settlement
4 Class members have had the opportunity to opt-out or object.

5 **b. The Settlement Resulted from Serious, Informed Negotiations**

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, and a full-day mediation before an experienced wage and hour mediator.
8 Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168
9 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, reviewed
10 extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data
11 to arrive at the estimated class-wide damages figures. *See Haines Decl.*, ¶¶ 15-23. The parties
12 attended a full-day mediation, and worked collaboratively in the following months to finalize the
13 Settlement. *Id.*, at ¶¶ 11-12. Thus, this factor supports preliminary approval.

14 **c. The Settlement Is Devoid of Obvious Deficiencies**

15 Preliminary approval of the Settlement is also warranted because there are no obvious
16 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
17 members. The amounts proposed for Class Counsel's attorneys' fees and costs, settlement
18 administration, LWDA payment, and Plaintiff's Class Representative Enhancement Award are
19 all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
20 obvious deficiencies, this factor supports preliminary approval.

21 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

22 The Settlement Class satisfies the criteria for certification of a settlement class under
23 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
24

25 recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-
26 SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an
27 average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
28 compelling defenses to liability; Plaintiff also notes several similar actions where the gross
recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

(2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and her counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for Flair Cleaners in California during the Class Period. Therefore, Settlement Class members can be identified from Flair Cleaners' personnel and employment records. Flair Cleaners represents that the Settlement Class consists of approximately 371 current and former non-exempt employees. *See* Haines Decl., ¶ 14. It would therefore be impracticable to bring all Settlement Class members before the Court, or for each Settlement Class member to bring an individual lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated on, among other issues, Flair Cleaners' timekeeping policies and/or practices, as well as its meal and rest period policies and/or practices. These types of claims are commonly held to be proper for class certification. *See e.g., Williams v. Superior Court*, 221 Cal.App.4th 1353, 1371 (2013) (certifying class based on uncompensated work time); *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

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1 **3. The Claims of the Named Plaintiff Are Typical**

2 The typicality requirement is satisfied where class representatives have claims that are
3 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191
4 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
5 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
6 of those held by the Settlement Class members. First, Flair Cleaners employed Plaintiff as a non-
7 exempt employee during the Class Period, and Plaintiff was subject to Flair Cleaners' wage and
8 hour policies at issue in this case. *See* Ceballos Decl., ¶ 2. Second, Plaintiff was injured by the
9 same challenged policies/practices that allegedly injured the Settlement Class as a whole. *Id.*, at
10 ¶ 3. For example, Plaintiff contends that Flair Cleaners failed to provide her with legally-
11 compliant meal periods, and failed to authorize and permit all legally-entitled rest periods. *Id.*
12 Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the
13 typicality requirement is satisfied.

14 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent**
15 **the Class**

16 The adequacy requirement examines conflicts of interest between named parties and the
17 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental*
18 *Services*, 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the
19 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
20 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
21 *Bank of America*, 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
22 indication that Class Counsel were not qualified and the named plaintiff had no interests
23 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
24 and hour class action litigation. *See* Haines Decl., ¶¶ 2-7; Blakely Decl., ¶¶ 2-6; Larsen Decl., ¶¶
25 2-4.

26 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

27 This Court should order distribution to the Settlement Class of the proposed Class Notice
28 in English and Spanish by U.S. Mail, using last known mailing address information provided by
Flair Cleaners. *See* Settlement, ¶ 9. This manner of giving notice is the "best notice practicable"

1 under the circumstances because it provides “individual notice to all members who can be
2 identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).
3 Here, Plaintiff proposes that the Settlement be administered by Phoenix Settlement
4 Administrators (“Phoenix”), an experienced class action settlement administrator. *See generally*
5 Lawrence Decl. and attached exhibits. Settlement Class members’ addresses will be ascertainable
6 through Flair Cleaners’ records, which Flair Cleaners will provide to Phoenix within ten (10)
7 business days after entry of an order preliminarily approving this Settlement. *See* Settlement, ¶
8 9(A). Within ten (10) business days of receipt of the Settlement Class members’ addresses,
9 Phoenix will run the addresses through the National Change of Address (“NCOA”) database
10 (which provides updated addresses for any individual who has moved in the previous four years
11 and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice to all
12 Settlement Class members. *See* Settlement, ¶ 9(B). To the extent that any notices are returned,
13 Phoenix will perform a “skip trace” to track any Settlement Class member’s current mailing
14 address. *Id.*, at ¶ 9(G).

15 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
16 because it advises Settlement Class members of the nature of the claims, basic contentions and
17 denials of the parties and the key terms of the Settlement, the 60-day deadline to opt-out or object
18 to the Settlement and the procedures by which to do so, explains the recovery formula and
19 expected recovery amount for each Settlement Class member, and advises them that they will be
20 bound by the terms of the Settlement if they do not opt-out. *See* Haines Decl., Exhs. 1, 2 to Exh.
21 A. The proposed Class Notice will also notify Settlement Class members of the final approval
22 hearing date and provides the Settlement Class contact information for Class Counsel, and advises
23 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
24 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
25 cost-effective method of reaching Settlement Class members.

26 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

27 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
28 appropriately scheduled to follow the deadline by which Settlement Class members must file

1 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

2 **V. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
4 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
5 Proposed Order submitted concurrently herewith.

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7 Respectfully submitted,

8 Dated: February 1, 2022

HAINES LAW GROUP, APC

9
10 By:



11 Paul K. Haines
12 Sean M. Blakely
13 Attorneys for Plaintiff
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