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

OMAR GALLO, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

MULHOLLAND TENNIS CLUB, a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV34581

*[Assigned for all purposes to the Hon. William
F. Highberger, Dept. SSC-10]*

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

Date: May 25, 2023

Time: 11:00 a.m.

Dept.: SSC-10

Complaint Filed: September 10, 2020

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on May 25, 2023, at 11:00 a.m., or as soon thereafter as the matter may be heard in Department
3 SSC-10 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California,
4 90012. Plaintiffs Omar Gallo, Salvador Hernandez Jr., and Alex Navarrete (“Plaintiffs”) will, and
5 hereby do, move this Court for:

- 6 1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement”)
7 between Plaintiffs and Defendant Mulholland Tennis Club (“Defendant”);
- 8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
9 certification, for settlement purposes only, of the proposed Settlement Class, defined
10 as follows:

11 All current and former non-exempt employees of Mulholland
12 Tennis Club in California at any time from September 10, 2016
13 through May 1, 2022 (“Class Period”).

- 14 3. Preliminary appointment of Plaintiffs as Class Representatives;
- 15 4. Preliminary appointment of Paul K. Haines and Sean M. Blakely of Haines Law
16 Group, APC as Class Counsel;
- 17 5. The scheduling of a hearing to consider whether the Settlement should be finally
18 approved and to award an amount for service awards to the Class Representatives,
19 attorneys’ fees and costs to Class Counsel, settlement administration costs, and a
20 payment to the Labor & Workforce Development Agency (“LWDA”) for its share of
21 civil penalties under the Private Attorneys General Act (“PAGA”);
- 22 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
23 Administrator for mailing notices; and
- 24 7. Approval of the proposed Notice Packet, and an order that it be disseminated to the
25 proposed Settlement Class as provided in the Settlement Agreement.

26 This motion is based on this notice of motion; the attached memorandum of points and
27 authorities; the declarations of Paul K. Haines and Sean M. Blakely and exhibits attached thereto;
28 the declaration of Jodey Lawrence of Phoenix Settlement Administrators and exhibits attached

1 thereto; the Settlement Agreement; the declaration of Plaintiffs; the pleadings and other papers
2 filed in this action; and any further oral or documentary evidence or argument presented at the
3 time of hearing.

4
5 Dated: May 3, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Omar Gallo, Salvador Hernandez Jr., and Alex Navarrete (“Plaintiffs”) seek
4 preliminary approval of a class action settlement (“Settlement”) with Defendant Mulholland
5 Tennis Club (“Defendant” or “Mulholland Tennis Club”). In their lawsuit, Plaintiffs allege that
6 Mulholland Tennis Club failed to provide all required meal periods, failed to authorize and permit
7 all required rest periods, and failed to pay all wages owed by virtue of its allegedly unlawful
8 timekeeping policies and/or practices. Based on these alleged wage and hour violations, Plaintiffs
9 also allege derivative claims for Mulholland Tennis Club’s alleged failure to timely pay all wages
10 at termination, failure to issue accurate itemized wage statements, unfair business practices, and
11 for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*

12 Plaintiffs now respectfully request that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,¹ in which Mulholland Tennis Club has
14 agreed to pay \$230,000.00 to the following Settlement Class, which is estimated to consist of 158
15 individuals:

16 All current and former non-exempt employees of Mulholland
17 Tennis Club in California at any time from September 10, 2016
through May 1, 2022 (“Class Period”).

18 If the Settlement is approved, Mulholland Tennis Club will pay a non-reversionary
19 Settlement Fund of \$230,000.00. After deducting administration costs, Plaintiffs’ requested Class
20 Representative Service Awards, the amount designated as PAGA civil penalties, and requested
21 attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately \$95,333.34 will
22 be distributed to all Settlement Class members who do not opt-out of the Settlement based on the
23 proportionate number of workweeks worked by each Settlement Class member during the Class
24 Period.

25 Significantly, Settlement Class members do not need to file a claim to reap the financial
26 benefits of the Settlement, as all Settlement Class members will automatically receive a payment

27 _____
28 ¹ The Stipulation of Settlement (“Settlement”) is attached as Exhibit 1 to the Declaration of Sean M. Blakely (“Blakely Decl.”) filed concurrently herein. The proposed Class Notice and Notice of Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement.

1 unless they affirmatively opt-out. There are approximately 158 Settlement Class members, and
2 the average payment to participating Settlement Class members is projected to be approximately
3 \$603.38.

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

9 **II. SUMMARY OF THE LITIGATION**

10 **A. FACTUAL AND PROCEDURAL BACKGROUND**

11 Mulholland Tennis Club is a private, member-owned club that provides recreational
12 activities and hosts social events in Los Angeles, California. *See* Declaration of Sean M. Blakely
13 (“Blakely Decl.”), ¶ 9. Plaintiff Omar Gallo worked for Mulholland Tennis Club as a non-exempt
14 “server” and “bartender” from 1989 until approximately November 19, 2019. *See* Declaration of
15 Omar Gallo (“Gallo Decl.”), ¶ 2. Plaintiff Salvador Hernandez Jr. worked for Mulholland Tennis
16 Club as a non-exempt employee from July 5, 1997 to approximately March 2020. *See* Declaration
17 of Salvador Hernandez Jr. (“Hernandez Decl.”), ¶ 2. Plaintiff Alex Navarrete worked for
18 Mulholland Tennis Club as a non-exempt employee from November 1973 to approximately
19 March 2020. *See* Declaration of Alex Navarrete (“Navarrete Decl.”), ¶ 2.

20 On September 10, 2020 Plaintiff Omar Gallo (“Plaintiff Gallo”) filed a Representative
21 Action complaint for PAGA civil penalties. Blakely Decl., ¶ 10. On February 14, 2022, Plaintiff
22 Gallo filed a First Amended Class and Representative Action Complaint (“FAC”) adding
23 Salvador Hernandez, Jr. and Alex Navarrete as named plaintiffs and class representatives, and
24 adding class-wide allegations against Mulholland Tennis Club for: (1) minimum wage violations;
25 (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5)
26 wage statement violations; (6) waiting time penalties; and (7) unfair competition. *Id.*

27 ///

28 ///

1 **B. PLAINTIFFS' CLAIMS AND MULHOLLAND TENNIS CLUB'S**
2 **DEFENSES**

3 **1. Arbitration Agreements**

4 Mulholland Tennis Club asserts that nearly all Settlement Class members signed valid and
5 enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 15. Setting aside
6 any arguments as to the merits of Plaintiffs' claims, Mulholland Tennis Club contends that absent
7 settlement, a classwide recovery was not possible and that only PAGA civil penalties could
8 potentially be recovered on behalf of a subset of the Settlement Class members. *Id.* As such,
9 Mulholland Tennis Club contends that absent its agreement to not raise the arbitration agreements
10 as an affirmative defense, any recovery to the Settlement Class members would be limited to only
11 the employees' potential 25% share of PAGA civil penalties. *Id.*

12 **2. Unpaid Wages Due to Time-Rounding**

13 Plaintiffs contend that Mulholland Tennis Club underpaid Settlement Class members due
14 to its allegedly unlawful rounding policies/practices. Blakely Decl., ¶ 16. However, Mulholland
15 Tennis Club argues that its rounding practices were lawful, since it was both neutral on its face
16 and resulted, over time, in employees being paid for all hours worked. *Id.*; *see also See's Candy*
17 *Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 901 (2012) (rounding policy lawful if
18 employer "applies a consistent rounding policy that, on average, favors neither overpayment nor
19 underpayment."). Mulholland Tennis Club also contends that multiple Courts of Appeal have
20 found rounding mechanisms to be lawful under similar circumstances. *See, e.g., Ferra v. Loews*
21 *Hollywood Hotel, LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other grounds)
22 (affirming summary judgment for employer on rounding claim where employees were underpaid
23 on 54.6% of shifts, finding that such facts do not establish that employees were "systematically
24 undercompensate[d]"); *AHMC Healthcare, Inc. v. Superior Court*, 24 Cal.App.5th 1014, 1028
25 (2018) (affirming summary judgment for employer where "bare majority" of employees were
26 underpaid due to rounding). Additionally, Mulholland Tennis Club asserts Plaintiffs would be
27 unable to certify a rounding class given the individualized inquiries as to whether Settlement
28 Class members performed compensable work prior to the scheduled start of shift, and whether

1 Settlement Class members were in fact underpaid, or potentially overpaid for each workday in
2 question. Blakely Decl., ¶ 16.

3 **3. Meal Period Claims**

4 Plaintiffs allege that Mulholland Tennis failed to provide them and other employees with
5 legally compliant meal periods. Blakely Decl., ¶ 17. Specifically, throughout the Class Period,
6 Plaintiffs allege that first meal periods were at times not provided until after the completion of
7 five hours of work due to work demands. *Id.* Plaintiffs further contend that meal periods were
8 often short (i.e., less than 30 minutes), and on occasion were not provided at all due to work
9 demands. *Id.*

10 Mulholland Tennis Club contends that it maintained compliant written meal period
11 policies throughout the Class Period and provided legally compliant meal periods in line with
12 those policies. Blakely Decl., ¶ 17. Mulholland Tennis Club also argues that under *Brinker*, it was
13 only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are
14 taken. *Id.*; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting
15 “ensure” standard). Mulholland Tennis Club also argues that any short, missed, or late meal
16 periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely
17 Decl., ¶ 17. Lastly, Mulholland Tennis Club argues individualized inquiries would be needed to
18 determine why each meal period was taken late or short or missed by each employee, making
19 certification of the meal period claim unlikely. *Id.*

20 **4. Rest Period Claims**

21 Plaintiffs allege that due to work demands, Mulholland Tennis Club failed to authorize
22 and permit all legally compliant off-duty rest periods throughout the Class Period. Blakely Decl.,
23 ¶ 18. However, Mulholland Tennis Club argues that it always maintained and enforced lawful
24 rest period policies and practices during the Class Period. *Id.* Mulholland Tennis Club also
25 maintains that any failure to take rest periods was the result of employee choice, and that it is not
26 required to police rest periods. *Id.* Finally, Mulholland Tennis Club contends that Plaintiffs’ rest
27 period claim is not amenable to class treatment as individualized inquiries would be required to
28 determine which employees failed to take rest periods, and the reasons why each employee failed

1 to take a rest period on a particular shift. *Id.* These considerations are particularly present with
2 respect to rest periods, Mulholland Tennis Club argues, as rest periods are not – and need not be
3 – recorded. *Id.*

4 **5. Claims Under Lab. Code §§ 203, 226, and the PAGA**

5 As a result of these alleged wage and hour violations, Plaintiffs assert that Mulholland
6 Tennis Club failed to comply with its final wage payment and wage statement obligations, in
7 violation of Labor Code §§ 203 and 226, respectively. Blakely Decl., ¶¶ 19-20. Additionally,
8 Plaintiffs allege that the wage statements issued to some Settlement Class members failed to
9 correctly list all hourly rates of pay in violation of Labor Code § 226(a)(9). *Id.*, at ¶ 19. Finally,
10 Plaintiffs seek civil penalties under the PAGA, based on the aforementioned claims. *Id.*, at ¶ 21.

11 Mulholland Tennis Club asserts it has strong, good-faith defenses to Plaintiffs’ underlying
12 claims, precluding imposition of waiting time penalties. Blakely Decl., ¶ 20; *see* 8 Cal. Code
13 Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting
14 time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith
15 dispute” precluded imposition of waiting time penalties). Moreover, because the waiting time
16 claim is derivative of Plaintiffs’ underlying wage claims, Plaintiffs would need to overcome
17 Mulholland Tennis Clubs’ defenses, both as to class certification and on the merits, as to their
18 underlying claims. Blakely Decl., ¶ 20. Mulholland Tennis Club further asserts Plaintiffs’ waiting
19 time penalty exposure was grossly inflated as not every former employee experienced the alleged
20 Labor Code violations. *Id.*

21 Mulholland Tennis Club further contends that any alleged wage statement violations could
22 not be shown to be “knowing and intentional,” particularly given its good-faith defenses; that
23 Plaintiffs cannot show they or other employees “suffer[ed] injury” due to alleged wage statement
24 violations, as required by Lab. Code § 226(e); and that wage statements always accurately
25 reflected amounts *paid* to employees. Blakely Decl., ¶ 19; *Maldonado v. Epsilon Plastics, Inc.*,
26 22 Cal.App.5th 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages
27 to ensure the employee is fully informed regarding the calculation of those wages’”).

28 Finally, Mulholland Tennis Club contends the PAGA claim fails because the underlying

claims fail. Blakely Decl., ¶ 21; *see 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.”). Mulholland Tennis Club further maintains that given its good-faith defenses, the Court would exercise its discretion and substantially reduce any PAGA penalties awarded. Blakely Decl., ¶ 21; 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); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. **DISCOVERY AND MEDIATION**

The parties engaged in extensive informal discovery. Blakely Decl., ¶ 11 Mulholland Tennis Club provided Plaintiffs with the size of the putative class, total workweeks in the Class Period, number of Aggrieved Employees in the PAGA Period, the total number of pay periods in the PAGA Period, as well as a sampling of timekeeping and payroll records for the putative class, as well as other documents and relevant information. *Id.* Plaintiffs conducted a comprehensive analysis and extrapolation of the data produced by Mulholland Tennis Club to calculate Mulholland Tennis Club’s potential exposure for each of Plaintiffs’ claims. *Id.* This discovery allowed the parties to assess the merits and potential value of Plaintiffs’ claims, the chances of certification of Plaintiffs’ claims, and Mulholland Tennis Club’s potential defenses. *Id.*

The parties attended a full-day mediation on November 9, 2021 with Jeffrey Krivis, Esq., a preeminent wage and hour class action mediator. Blakely Decl., ¶ 12. At mediation, the parties vigorously debated their legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal bases for the claims and defenses. *Id.* At the conclusion of mediation, Mr. Krivis issued a mediator’s proposal for a classwide settlement, which was accepted by both sides. *Id.* During the months that followed, the parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. *Id.*

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1 **III. THE PROPOSED SETTLEMENT**

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

3 Under the Settlement, Mulholland Tennis Club will pay a non-reversionary Settlement
4 Fund of \$230,000.00. *See* Settlement, § 3. No Settlement Class member will need to file a claim
5 form as each Settlement Class member will automatically receive a Settlement Award unless he
6 or she affirmatively opts out. *Id.*, at §§ 3-4. The monetary terms of the Settlement are summarized
7 below:

8	• Settlement Fund:	\$230,000.00
9	• Minus Court-approved attorneys' fees (one-third):	\$76,666.66
10	• Minus Court-approved, verified costs (up to):	\$25,000.00
11	• Minus Court-approved Service Awards (up to):	\$15,000.00
12	• Minus Amount designated as PAGA penalties:	\$10,000.00
	• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
	Net Settlement Amount ("NSA"):	\$95,333.34
	<u>PLUS 25% of PAGA penalties ("PAGA Amount")</u>	<u>\$2,500.00</u>
	TOTAL Amount Paid to Settlement Class:	\$97,833.34

13 **1. The Settlement Provides for Reasonable Monetary Payments**

14 After deducting administration costs, service awards to Plaintiffs, the amount set aside as
15 PAGA civil penalties, and attorneys' fees and costs, Mulholland Tennis Club will pay a Net
16 Settlement Amount of at least \$95,333.34 all Settlement Class members who do not opt out.
17 Blakely Decl., ¶ 13; *see also* Settlement, § 3(C). According to Mulholland Tennis Club there are
18 approximately 158 Settlement Class members. Blakely Decl., ¶ 14. Thus, the average Settlement
19 Award is estimated to be \$603.38. *Id.* The Settlement Administrator will calculate payments from
20 the Net Settlement Amount based on each participating Settlement Class member's proportionate
21 Workweeks worked during the Class Period. Settlement, § 4(A)(i). Additionally, Two Thousand
22 Five Hundred Dollars and Zero Cents (\$2,500.00) shall be designated as the "PAGA Amount,"
23 and shall be distributed to all Settlement Class members (regardless of whether they opt-out)
24 proportionately based on the number of pay periods worked at any time from July 2, 2019 through
25 May 1, 2022 (the "PAGA Period"). *Id.*, at §§ 2(B), 4(A)(ii). Mulholland Tennis Club will pay
26 employer-side payroll taxes on the wage portion of each payment in addition to the Settlement
27 Fund. *Id.*, § 3(E).

28 Settlement Class members will have sixty (60) days from mailing to opt-out or object.

Settlement, §§ 9(C)-(D). Settlement Class members who do not opt out will be bound by the Settlement and will release all claims against Mulholland Tennis Club that were alleged, or could have been alleged based on the facts alleged in, Plaintiffs' operative Complaint. *Id.*, § 2(A). In addition, all Settlement Class members (regardless whether they opt out) who worked for Mulholland Tennis Club during the PAGA Period will release all claims for PAGA civil penalties based on those alleged violations. *Id.*

2. Service Awards, Attorneys' Fees and Costs, and LWDA Payment

Plaintiffs will apply for a Service Award at final approval in the amount of \$5,000 each, for a total of \$15,000, for their services to the Settlement Class. Blakely Decl., ¶ 25; *see also* Settlement, § 6. "[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the requested Service Awards are intended to recognize the substantial time and effort Plaintiffs expended on behalf of the Settlement Class, including providing factual information and documents to counsel, identifying potential witnesses, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of their claims. Plaintiffs respectfully submit that this requested service awards are well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 enhancement award to each of five named plaintiffs from \$505,058.60 settlement).

At final approval, Plaintiffs' counsel will request an attorneys' fees award of one-third of the Settlement Fund, and up to \$25,000 in verified costs. Blakely Decl., ¶ 24; *see also* Settlement, § 5. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Blakely Decl., ¶ 24. Plaintiffs' counsel has expended significant time conducting pre-filing investigation; legal research; analyzing Plaintiffs' claims; analyzing employee timekeeping and payroll records and other data and documents; preparing for and attending mediation; negotiating the Settlement; preparing this

1 Motion; and otherwise prosecuting this case. *Id.* Class Counsel anticipate incurring additional
2 fees in appearing at the hearing on this Motion, supervising the Notice process, and preparing the
3 Final Approval motion and appearing at the Final Approval Hearing. *Id.*

4 It is appropriate to award attorneys' fees in class actions as a percentage of the "common
5 fund" created by a settlement. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding
6 "the percentage of fund method survives in California class action cases"). Counsel's fee request
7 of one-third of the Settlement Fund is well within the range of reasonableness, and is typical for
8 common fund settlements, and in fact was the percentage approved in *Laffitte*.

9 Additionally, the parties have agreed to designate \$10,000.00 of the Settlement Fund as
10 PAGA civil penalties, of which \$7,500.00 (75%) will be paid to the LWDA, with the remaining
11 \$2,500.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to
12 be allocated per Labor Code § 2699(i). *See* Settlement, § 3(D)(5). Plaintiffs submit this allocation
13 to the LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments,*
14 *LLC* (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA
15 payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro*
16 *Unlimited, Inc.* (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving
17 PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

18 **IV. ARGUMENT**

19 **A. PRELIMINARY APPROVAL IS WARRANTED**

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

1 F.3d at 1027. There is an initial presumption of fairness, as here, when a settlement was negotiated
2 at arm's length by experienced class counsel with the assistance of an experienced mediator.
3 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

4 **1. Standard for Preliminary Approval**

5 To make a fairness determination, a court should consider several factors, including: “the
6 strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
7 the risk of maintaining class action status through trial, the amount offered in settlement, the
8 extent of discovery completed and the stage of the proceedings, [and] the experience and views
9 of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is
10 not exclusive and the Court is free to engage in a balancing and weighing of the factors depending
11 on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245
12 (2001). The proposed Settlement is fair, adequate, and reasonable in light of these factors.

13 **a. The Strength of Plaintiffs’ Case**

14 Although they steadfastly maintain their claims are meritorious, Plaintiffs acknowledge
15 there were substantial risks and uncertainty in proceeding with class certification and eventual
16 trial on the merits. As described in section II.B., *supra*, Mulholland Tennis Club presented
17 multiple defenses to Plaintiffs’ claims, both on the merits and to class certification. While
18 Plaintiffs were prepared to litigate their claims through class certification and ultimately trial,
19 success was far from certain.

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

21 Although the parties had engaged in significant informal discovery, the Parties had not
22 yet completed formal written and deposition discovery, which would have required the
23 expenditure of substantial time and resources by all parties. Blakely Decl., ¶ 23. Furthermore,
24 Mulholland Tennis Club maintains that Plaintiffs and Settlement Class members signed valid and
25 binding arbitration agreements during their employment with Mulholland Tennis Club,
26 precluding them from proceeding on a class-wide basis. *Id.* Even if Plaintiffs were to overcome
27 the arbitration agreements and certify the classes, the parties would incur considerably more
28 attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*

The Settlement avoids those risks and the accompanying delay and expense, and thus this factor supports preliminary approval. *Id.*

c. Risk of Maintaining Class Action Status

Due to the fact that Plaintiffs and Settlement Class members were subject to arbitration agreements with class action waivers, it is likely that absent settlement, there would not be a certified class at the time of trial. Indeed, Mulholland Tennis Club only agreed to waive their right to assert the arbitration agreements as a defense in connection with this Settlement. Thus, this factor support preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides fair and reasonable monetary recovery for Settlement Class members concerning heavily disputed claims where the law is in a state of frequent change. Based on a review of the data produced by Mulholland Tennis Club in connection with mediation, Plaintiffs conducted the following exposure analyses:

Unpaid Wages Due to Unlawful Rounding: \$1,943

Plaintiffs contend that Mulholland Tennis Club utilized an uneven timekeeping system that rounded Settlement Class members' timekeeping entries to the quarter of an hour, thus failing to account for all hours actually worked, which resulted in a systematic underpayment of wages to Settlement Class members. Blakely Decl., ¶ 16. Plaintiffs' analysis and extrapolation of timekeeping and payroll data revealed that Settlement Class members were underpaid for approximately 354 hours in the aggregate over the Class Period. *Id.* Therefore, Plaintiffs calculate Mulholland Tennis Club's maximum potential exposure for this claim to be approximately \$10,797 (354 hours * \$15.25 average hourly rate * 2 [liquidated Damages per Labor Code §1194.2). *Id.*

As noted above, Mulholland Tennis Club 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 of its rounding practice; that employees did not perform any work before the scheduled start of their shifts; and that Plaintiffs would be unable to certify this claim given the

1 individualized inquiries as to whether employees were in fact underpaid, or overpaid for each
2 workday in question. Blakely Decl., ¶ 16. Based on these defenses, Plaintiffs discounted the
3 maximum exposure by 70% to account for the risk of non-certification and potential inability to
4 proceed on a classwide basis due to the arbitration agreements, and an additional 40% to account
5 for Mulholland Tennis Club’s defenses on the merits, to arrive at an estimated exposure of
6 approximately \$1,943. *Id.*

7 Meal Period Premium Wages: \$79,517

8 Plaintiffs allege that Mulholland Tennis Club failed to provide them and other Settlement
9 Class members with legally compliant meal periods. Blakely Decl., ¶ 17. Specifically, throughout
10 the Class Period, Plaintiffs allege that first meal periods were at times not provided until after the
11 completion of five hours of work due to work demands, that they were often less than 30 minutes,
12 and that they sometimes were not provided at all. *Id.* Based on Plaintiffs’ analysis and
13 extrapolation of employee timekeeping records produced by Mulholland Tennis Club, there were
14 approximately 40,800 shifts over 6.0 hours worked in the Class Period. *Id.* Plaintiffs’ analysis
15 revealed that for the vast majority of shifts (approximately 71% of all shifts), Settlement Class
16 members were provided with a non-compliant first meal period. *Id.* Therefore, Plaintiffs estimated
17 the maximum potential exposure for this claim at approximately \$441,762 (28,968 meal period
18 violations * \$15.25 average premium). *Id.*

19 As discussed above, Mulholland Tennis Club maintains that it has always provided legally
20 compliant meal periods to Settlement Class members, and that contrary to Plaintiffs’ allegations,
21 it has maintained and enforced lawful meal period practices which provide for compliant meal
22 periods. Blakely Decl., ¶ 17. Mulholland Tennis Club further argues that under *Brinker* it is only
23 required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken,
24 and that, as described above, it has always done so, and any non-complaint first meal periods in
25 the timekeeping records were the result of employee choice. *Id.*; *see also Brinker, supra*, 53
26 Cal.4th at 1038 (rejecting “ensure” standard and holding employers only have to “provide”
27 employees the opportunity to take meal periods). Finally, Mulholland Tennis Club maintains that
28 the meal period claim is not suited for class certification, since individual inquiries would be

1 needed to assess which employees took non-complaint or missed meal periods, and the reasons
2 why a particular employee did not take a compliant meal period on a particular shift. Blakely
3 Decl., ¶ 17. In light of these defenses and arguments, Plaintiffs discounted Mulholland Tennis
4 Club's maximum exposure by 70% for the risk of non-certification and potential inability to
5 proceed on a classwide basis due to the arbitration agreements, and an additional 40% to account
6 for Mulholland Tennis' defenses on the merits, to arrive at an estimated total of approximately
7 \$79,517. *Id.*

8 Rest Period Premium Wages: \$74,664

9 Plaintiffs allege that Mulholland Tennis Club failed to authorize and permit Settlement
10 Class members to take off-duty rest periods, because of work demands imposed by Mulholland
11 Tennis Club. Blakely Decl., ¶ 18. Based on Plaintiffs' analysis of employee timekeeping records,
12 there were approximately 40,800 shifts of 3.5 hours or more worked by Settlement Class members
13 during the Class Period. *Id.* Thus, assuming a 100% violation rate for those shifts, Plaintiffs
14 estimated the maximum potential exposure for this claim as approximately \$622,200 (40,800 rest
15 period violations * \$15.25 average premium). *Id.*

16 But as noted above, Mulholland Tennis Club argues that it always maintained and
17 enforced lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 18.
18 Mulholland Tennis Club also maintains that any failure to take rest periods was the result of
19 employee choice, and that it is not required to police rest periods. *Id.* Finally, Mulholland Tennis
20 Club contends that Plaintiffs' rest period claim is not amenable to class treatment as
21 individualized inquiries would be required to determine which employees failed to take rest
22 periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id.*
23 These considerations are particularly present with respect to rest periods, Mulholland Tennis Club
24 argues, as rest periods are not – and need not be – recorded. *Id.* In light of these defenses, Plaintiffs
25 discounted the maximum amount by 70% for risk of non-certification and potential inability to
26 proceed on a classwide basis due to the arbitration agreements, and an additional 60% for risk of
27 being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an
28 estimated realistic exposure of \$74,664. *Id.*

1 Wage Statement Penalties: \$18,848

2 Plaintiffs' expert's analysis reflected that there were approximately 2,513 pay periods
3 worked by Settlement Class members within the one-year liability window under Labor Code §
4 226. Blakely Decl., ¶ 19. In calculating Mulholland Tennis Club's exposure, Plaintiffs assumed
5 they could recover the "initial" \$50 penalty under Section 226(e) for each violation, for a total of
6 \$125,650 (2,513 pay periods * \$50) in potential penalties. *Id.*; see also *Amaral v. Cintas Corp.*
7 *No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer
8 is notified it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43
9 (N.D. Cal. 2014) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating
10 amount-in-controversy for wage statement claim). However, given Mulholland Tennis Club's
11 arguments that no violations occurred, that Settlement Class members suffered no "injury," that
12 any violations were not "knowing and intentional," as well as risks associated with Plaintiffs'
13 underlying claims discussed above, Plaintiffs discounted the maximum exposure by 70% for risk
14 of non-certification and potential inability to proceed on a classwide basis due to the arbitration
15 agreements, and by an additional 50% for risks on the merits, for an estimated realistic exposure
16 of approximately \$18,848. Blakely Decl., ¶ 19.

17 Waiting Time Penalties: \$42,822

18 There are approximately 130 former Settlement Class members who worked for
19 Mulholland Tennis Club on or after September 10, 2017, and are therefore eligible for waiting
20 time penalties. Blakely Decl., ¶ 20. Plaintiffs estimated an average waiting time penalty of \$3,660
21 (\$15.25/hr * 8 hrs * 30 days), and calculated Mulholland Tennis Club's maximum waiting time
22 penalty exposure at approximately \$475,800 (130 former employees * \$3,660 average penalty).
23 *Id.* However, Mulholland Tennis Club asserts it has strong, good-faith defenses to Plaintiffs'
24 underlying claims and thus, even if Plaintiffs were able to recover on their underlying claims,
25 they would not be able to recover waiting time penalties. *Id.* Moreover, Plaintiffs would need to
26 overcome Mulholland Tennis Club's defenses, both as to class certification and as to the merits,
27 to their underlying claims. *Id.* Based on these defenses, Plaintiffs discounted Mulholland Tennis
28 Club's maximum exposure by 70% for risk of non-certification and potential inability to proceed

on a classwide basis due to the arbitration agreements and by an additional 70% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately \$42,822. *Id.*

PAGA Civil Penalties: \$30,785

Plaintiffs estimated a maximum PAGA exposure of \$251,300 based on 2,513 pay periods during the PAGA Period at the \$100 “initial” violation rate under Lab. Code § 2699(f). Blakely Decl., ¶ 21; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derive from Plaintiffs’ underlying claims, each of which Mulholland Tennis Club vigorously disputes. Blakely Decl., ¶ 21. The PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Mulholland Tennis Club argued the Court would reduce penalties significantly given its good-faith defenses. *Id.* Thus, Plaintiffs discounted the maximum figure by 65% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and by an additional 65% for risk of the Court reducing penalties, for an estimated exposure of approximately \$30,785. *Id.*; *see also Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

Using these figures, Plaintiffs estimated the realistic total recovery for the Settlement Class would be approximately \$248,579. Blakely Decl., ¶ 22. Thus, the proposed \$230,000.00 settlement represents approximately 92.5% of the reasonably forecasted recovery. *Id.* Particularly in light of Mulholland Tennis Club’s defenses, the Settlement amount is substantial, and preliminary approval is appropriate.

e. The Experience and Views of Counsel.

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiffs are represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8.

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

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

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

7 The Settlement reflects over 92.5% of the estimated recovery the Settlement Class could
8 realistically expect in light of the significant litigation risks, and will provide tangible, monetary
9 compensation for hotly disputed wage claims. Plaintiffs submit the Settlement is within the range
10 of possible approval, such that notice should be provided to the Settlement Class.

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

12 The Settlement is a result of extensive informal discovery, a full-day mediation, and
13 months of additional negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168
14 Cal.App.4th at 130. Plaintiffs carefully vetted the claims at issue and conducted detailed data
15 analyses to arrive at estimated potential damages. *Blakely Decl.*, ¶¶ 15-22. The Parties then
16 worked together to finalize the Settlement. This factor thus supports preliminary approval.

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

18 The Settlement contains no obvious deficiencies. The Settlement will provide tangible
19 monetary relief to Settlement Class members. The amounts proposed for attorneys’ fees, costs,
20 settlement administration costs, and service awards are all reasonable. Thus, this factor supports
21 preliminary approval.

22 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

23 The Settlement Class satisfies the criteria for certification because: 1) it is sufficiently
24 numerous; 2) common questions of law and fact predominate; 3) Plaintiffs’ claims are typical;
25 and 4) Plaintiffs and their counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

26 **1. The Proposed Class Is Ascertainable and Numerous**

27 A class is “ascertainable” where members “may be readily identified without unreason-
28 able expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th

905, 919 (2010). Here, the Settlement Class includes all non-exempt employees who worked for Mulholland Tennis Club in California during the Class Period. *See* Settlement, § 1. The Settlement Class can therefore be identified from Mulholland Tennis Club’s records. Mulholland Tennis Club represents that there are approximately 158 Settlement Class members, making it impracticable to bring them all before the Court. Thus, numerosity is satisfied.

2. Common Issues of Law and Fact Predominate for Settlement Purposes

The focus on certification is what types of questions, “common or individual,” are likely to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated primarily on Mulholland Tennis Club’s unlawful rounding policies/practices and meal and rest period policies/practices. These claims are commonly held proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying meal & rest period claims).

3. The Claims of the Named Plaintiffs Are Typical

Typicality is satisfied where a class representative’s claims are typical of those of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiffs’ claims are typical of the Settlement Class. Plaintiffs worked for Mulholland Tennis Club during the Class Period as non-exempt employees and were injured in the same manner as Settlement Class members. *See* Gallo Decl., ¶¶ 2-4; Hernandez Decl., ¶¶ 2-4; Navarrete Decl., ¶¶ 2-4.

4. Plaintiffs and Their Counsel Will Adequately Represent the Class

The adequacy inquiry examines conflicts of interest between a named plaintiff and the class she seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class as there are no known conflicts between Plaintiffs and Settlement Class members, and Plaintiffs’ counsel have extensive relevant experience. *See* Blakely Decl., ¶¶ 2-6, 26; Haines Decl., ¶¶ 2-8.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

This Court should order distribution of the Notice by U.S. Mail, using last known mailing addresses provided by Mulholland Tennis Club. *See* Settlement, § 9. This is the “best notice

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

15 The Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class
16 members of the basic contentions and denials of the parties, the key terms of the Settlement, the
17 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by the
18 Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A-B to Exh. 1. The Notice also notifies
19 Settlement Class members of the final fairness hearing and provides Class Counsel’s contact
20 information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective method of
21 reaching Settlement Class members.

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1 **V. CONCLUSION**

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

5
6 Dated: May 3, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By: 
9 Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiffs