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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DALILA VALENCIA, individually, and on
 behalf of all other similarly situated current and
 former employees of Defendants;

PLAINTIFF,

vs.

VISTA HILL FOUNDATION, a Domestic
 Nonprofit Organization; and DOES 1 through 50,
 inclusive,

Defendants.

CASE NO.: 37-2021-00012102-CU-OE-CTL

[Assigned for all purposes to the Hon. Joel R. Wohlfeil, Dept. C-73]

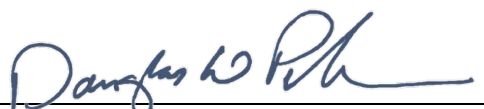
**NOTICE OF MOTION AND MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES; DECLARATION OF
 DOUGLAS W. PERLMAN IN SUPPORT
 THEREOF**

Date: April 22, 2022
Time: 9:00 a.m.
Dept.: C-73

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
 NOTICE that on April 22, 2022, at 9:00 a.m., in Department C-73 of the above-entitled Court,
 Plaintiff Dalila Valencia will move the Court for Preliminary Approval of the Joint Stipulation of
 Class Action Settlement in the above-captioned case. The motion will be made pursuant to
 California Rule of Court 3.769, and will be based upon this Notice, the attached Memorandum of
 Points and Authorities and Declaration of Douglas W. Perlman, the Joint Stipulation of Class
 Action Settlement filed concurrently herewith, including attachments thereto, and upon any other
 evidence which may be considered by the Court at time of hearing.

Dated: March 1, 2022

RASTEGAR LAW GROUP, APC

By 
 FARZAD RASTEGAR
 DOUGLAS W. PERLMAN
 Attorneys for Plaintiff
 Dalila Valencia

1 **I. INTRODUCTION**

2 Plaintiff Dalila Valencia filed a wage and hour class action against Defendant Vista Hill
3 Foundation on March 17, 2021. The case alleges non-compliant meal periods and rest breaks,
4 non-compliant wage statements, failure to properly pay straight time and overtime, and
5 derivative causes of action. Following investigation and a substantial exchange of documents
6 and information, the parties engaged in a full day of mediation with Louis Marlin, Esq., a well-
7 known and highly respected employment law mediator. The mediation resulted in a settlement
8 agreement, and the parties have now entered into a Joint Stipulation of Class Action Settlement
9 (hereinafter sometimes referred to as the “Settlement Agreement” or “Agreement”). The parties
10 now seek Preliminary Approval of the Settlement Agreement.
11

12 **II. BACKGROUND AND PROCEDURAL HISTORY**

13 This is a wage and hour class action alleging meal period and rest break violations, non-
14 compliant wage statements, overtime and straight time violations, failure to timely pay wages
15 upon termination, as well as a representative action for civil penalties under PAGA, and
16 California’s Unfair Competition Law (“UCL”).
17

18 The case was filed in March, 2021. Thereafter, the parties agreed to mediate the case with
19 Louis Marlin, Esq. In advance of the mediation, Defendant supplied Plaintiff with time and
20 payroll documents, as well as other information, documents, and data requested by Plaintiff.
21 Plaintiff’s expert, Aaron Woolfson, analyzed the data and provided his analysis to Class Counsel
22 for use in the mediation.
23

24 The parties held an all-day session of mediation with Louis Marlin on August 31, 2021.
25 The mediation ended with a mediator’s proposal, which was accepted by the parties.
26
27

During the class period, Defendant has operated a non-profit health care organization. Plaintiff was employed by Defendant, and worked as a non-exempt, hourly employee. Plaintiff's core allegations include that she was not provided with compliant meal periods and rest breaks while employed by Defendant, that she was not paid all of the wages to which she was entitled, and that she received non-compliant wage statements. Plaintiff pursues derivative claims under the California Labor Code, PAGA, and the UCL on this basis.

The settlement agreement in the pending action involves a class of: "All non-exempt employees of Vista Hill Foundation in California at any time from March 17, 2017, through December 29, 2021."

III. TERMS OF THE SETTLEMENT AGREEMENT

- Defendant shall pay a total sum not to exceed \$750,000.00;
- Attorneys fees of not more than one-third of the gross settlement fund, to be paid from the Settlement;
- Class Counsels' litigation costs, of not more than \$15,000.00, to be paid from the Settlement;
- An Enhancement in the amount of \$10,000 to the class representative, to be paid from the Settlement;
- Costs of Settlement Administration, of up to \$15,000.00, to be paid from the Settlement;
- PAGA payment in the total amount of \$30,000, 75% of which will be paid to the California Labor & Workforce Development Agency, the remaining 25% to be paid to the PAGA representative group, which is co-extensive with the Class.

- Automatic payment to class members (i.e., no claim forms used, no reversion to Defendant).

Each Settlement Class Member shall be entitled to a portion of the net settlement fund based upon the number of workweeks the Settlement Class Member met the criteria for inclusion in the Settlement Class. Each Class Member shall receive payment of a pro rata portion of the total combined work weeks of all the Settlement Class Members. By way of example, if the net settlement fund is \$400,000, and there are a total of 80,000 workweeks between all Settlement Class Members, if Class Member “A” has 100 workweeks, Class Member A’s portion of the net settlement fund would be \$500.00 [$\$400,000 \div 80,000 \text{ workweeks} = \$5.00 \times 100 = \$500.00$].

The Class Settlement Payment to each Class Member will be apportioned as 33 1/3% wages, and 66 2/3% penalties and interest. The PAGA payment to each PAGA Group Member will be treated as 100% penalties.

Settlement checks will remain valid for a period of 180 days. After expiration of that period of time, any remaining uncashed checks will be distributed consistently with California Code of Civil Procedure Section 384.

The complete settlement agreement is set forth in the Joint Stipulation of Class Action Settlement filed concurrently herewith.

IV. ANALYSIS OF POTENTIAL DAMAGES

Plaintiffs' Allegations:

Plaintiffs' First Amended Complaint alleges the following nine causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum wage and straight time wages; (4) failure to pay overtime compensation; (5) failure to timely pay wages due upon termination; (6) failure to provide accurate wage statements and maintain

required records; (7) unfair business practices; and, (8) Representative cause of action for civil penalties under the California Private Attorneys General Act.

Relevant Data:

Defendant produced time and payroll data, as well as relevant policy documents, for the class. The data was analyzed by Plaintiff's expert, Aaron Woolfson. Plaintiff's summary of the relevant data is as follows:

Class Member and Shift Data

Class Members:	1,040
Class Members Currently Employed:	354
PAGA Representative Group:	1,040
Average hourly rate of pay:	\$18.00
Total number of shifts over five hours:	90,255

Wage Order Meal Period Compliance – Shifts Greater Than Five Hours

(Includes Meal Periods Subject to Waiver by Agreement)

No meal period:	37,152
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Wage Order Meal Period Compliance – Shifts Greater Than Six Hours

(Not Subject to Waiver by Agreement)

No meal period:	16,045
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Wage Order Meal Period Compliance – Shifts Greater Than Five Hours

(Includes All Meal Period Eligible Shifts)

Late and/or Short meal period:	9,047
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Damages:

Plaintiffs received from Defendant the time and payroll data outlined above, and have constructed a damages model based upon the data and Plaintiff's experience as Defendant's employee.

A. Compensation for Unpaid Wages and/or Premium Pay

1. Premium Wages Due for Meal Period Violations

Under California Labor Code § 226.7 and the Industrial Welfare Commission Wage Order, employees are entitled to one-hour of wages at the regular rate of compensation if they did not receive a full 30-minute, uninterrupted, duty-free meal period within the first five hours of work.

Plaintiffs allege that they were improperly denied 30-minute, uninterrupted, duty-free meal periods within the first five hours of work in violation of IWC Wage Order 4-2001(11). Based upon the data set forth above, Plaintiff's calculation of maximum potential damages on the meal period claims are as follows:

- No meal period recorded (including meal periods subject to waiver): 37,152
- No meal period recorded (not including meal periods subject to waiver): 16,045
- Late and/or short meal period recorded: 9,047
- Total Meal Period violations:
46,199 (including waivable meal periods)

25,092 (not including waivable meal periods)

- 46,199 violations x \$18.00 (average hourly rate) = **\$831,582.00**
- (alternatively) 25,092 non-waivable violations x \$18.00 (average hourly rate) = **\$451,656.00**

2. Rest Breaks, Off the Clock, Failure to Pay all Wages Due

Plaintiff contends that Defendant failed to provide duty-free rest breaks given the Class Members' responsibilities and staffing levels, and also had a policy and practice of encouraging off the clock work, which resulted in an underpayment of wages.

Employers in California are not required to record rest breaks, and Defendant did not record rest breaks. Therefore, evidence supporting the claim for rest break violations would be based upon anecdotal evidence, making rest break penalties extremely difficult to calculate with any precision and to prosecute on a class basis. *See, e.g., Ordonez v. Radio Shack*, 2013 WL 210223, at *12 (C.D. Cal. Jan. 17, 2013) (noting that given lack of recorded rest breaks, there would be challenges regarding the "method for proving when class members were or were not authorized and permitted to take a rest break."). Because off the clock time is also (by definition) not recorded, damages for this claim would also be very difficult to establish and to prosecute on a class basis. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051 (noting plaintiff must produce "substantial evidence of a systematic company policy to pressure or require employees to work off-the-clock" to demonstrate that such claims are common to the putative group.)

Given the foregoing, Plaintiff discounted the rest break and wage claims premised on off the clock work, and ascribed minimal value to them relative to the other claims. The maximum

potential recovery on the rest break claim, if it could be certified and proved at trial, would be a penalty for nearly every shift, as follows:

- 90,255 shifts x \$18.00 average hourly rate = **\$1,624,590.**

3. *Minimum Wage, Straight Time, and Overtime*

As set forth above, this claim involves work performed off the clock. Because such work is, by definition, unrecorded, a damages analysis is extremely speculative, at best. Liability and damages would both depend entirely upon anecdotal evidence, and the possibility of expert analysis based upon a survey. (However, courts in recent years have been viewing survey evidence with skepticism.) Some employees, such as Plaintiff, can provide anecdotal evidence that they were forced to work off the clock. Others would testify that they never experienced that particular violation. It would appear to be an uphill battle to establish liability and damages for this claim on a class basis. Plaintiff believes it has minimal value in the class action context.

4. *Wage Statements*

Plaintiff's Labor Code § 226 claim is derivative of the other claims, such as the meal period claim. Section 226 provides for a civil penalty of \$50 per pay period in which a compliant wage statement is not provided, and a \$100 civil penalty thereafter, with a cap of \$4,000 per employee. Plaintiff's expert analysis applied this formula to Defendant's payroll for the relevant time period, and the maximum potential Section 226 penalties which could be awarded, for all employees, equals **\$160,950.00.**

5. *Payment of All Wages Due to Terminated Employees*

California Labor Code §203 provides that, as a result of an employer's willful failure to timely pay all wages due to terminated or quitting employees, wages continue to accrue as a penalty until all wages due are paid, or for a period of 30 days, whichever occurs first. The

calculation for an employee earning the average rate of pay would be: \$18.00 x 8 hours x 30 days = \$4,320.00. Multiplying that figure by 686 former employees yields a total maximum of **\$2,963,520.00**.

To prevail on a Section 203 claim, Plaintiff would have to demonstrate that the failure to pay all wages due was “willful.” A 203 claim may be successfully defeated by a showing of a reasonable, good-faith belief on the part of the employer that the disputed wages were not due. *Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460. Uncertainty in the law may negate a Section 203 claim as well. *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859. In the context of a Section 203 claim relying upon meal period and rest break penalties, in which an employee’s decision to forgo meal periods or rest breaks negates the claim, a good-faith defense would be difficult to overcome.

B. Penalties

Pursuant to California Labor Code § 2699, if, at the time of the alleged violation, the person employs one or more employees, the default civil penalty is \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 for each aggrieved employee per pay period for each “subsequent violation.” Lab. Code § 2699(f). The term “subsequent violation” is a term of art, and some courts have suggested that a “subsequent violation” does not trigger under PAGA until an employer is on notice that it is violating the law. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1199; *Willis v. Xerox Business Solutions* (E.D. Cal. Nov. 15, 2013) 2013 WL 6053831, at *6. Furthermore, the court retains discretion to reduce such civil penalties when, “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *Id.* § 2699(e)(2).

Assuming a violation per pay period, the maximum potential penalties under PAGA, calculated by Plaintiff's expert, are: **\$453,300.00**.

The foregoing describes the maximum estimated potential damages and penalties. As set forth more fully below, Plaintiff discounted these amounts significantly, given Defendant's defenses to the claims, the significant risks of proceeding, and the discretionary nature of the penalties.

V. CONDITIONAL CLASS CERTIFICATION

The parties propose that the Court conditionally, pursuant to the terms of the settlement agreement, certify the following class of plaintiffs:

"All non-exempt employees of Vista Hill Foundation in California at any time from March 17, 2017 through December 29, 2021."

The two primary requirements necessary to maintain a California class action are: (1) an ascertainable class, and (2) a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. *Daar v. Yellow Cab Company* (1967) 67 Cal.2d 695, 704. These requirements are generally more broadly expressed as the elements of (1) numerosity of class members, (2) typicality of claims, (3) adequacy of representation by the named plaintiffs, and (4) the superiority and predominance of common questions of law and fact. In fact, these four elements are considered under the Consumer Legal Remedies Act, Civil Code § 1781(b), which has been specifically approved by the California Supreme Court as the standard for determining whether the requirements of certification under C.C.P. § 382 have been met. *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 820.

In this case, Plaintiff has stated claims of violations of California's Wage and Hour statutes relating to wage payment and meal period policies, amounting to practices applicable to

the class as a whole. Therefore, prosecution of this lawsuit as a class action is appropriate and desirable as an effective and efficient manner in which to remedy a pervasive wrong. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 477-478. A judicial policy favoring the maintenance of appropriate class actions has increasingly been emphasized as serving an important function in our judicial system and society. Class actions can prevent a defendant from avoiding exposure for wrongful conduct simply because individual victims may lack the financial sophistication, financial motivation or resources to sue on their own. *Vasquez v. Sup. Ct.*, supra, 4 Cal.3d at 807-808.

In this case, the requirements for class certification are present.

A. Numerosity of Class Members:

Defendant employed approximately 1,040 class members over the duration of the class period. The California Supreme Court has upheld a class of only 10 individuals. *Bowles v. Superior Court* (1955) 44 Cal.2d 574. The Class, therefore, easily meets the numerosity requirement.

B. Typicality of Claims:

The claims of class members are essentially identical. Plaintiff contends that Defendant had a practice of failing to pay wages owed for non-compliant meal and rest periods, including missed, short and late meal periods, in addition to other, less substantial violations, and as a result, Defendant committed related derivative violations of the Labor Code. Plaintiff, like other putative class members, was employed by Defendant in similar capacities, and contends she suffered similar violations of law. As such, Plaintiff contends her claims are typical of the class.

C. Adequacy of Representation by Plaintiff:

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.

Plaintiff is a former employee of Defendant, who has alleged she was subjected to the illegal policies and practices set forth in the complaint. Plaintiff has been instrumental in providing the information and evidence used to bring the action and the settlement. There is no conflict between the Plaintiff and the class.

Plaintiff's counsel are adequate to represent the Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

**D. Community of Interest, and Superiority and Predominance of
Common Questions of Law and Fact:**

The community of interest requirement "does not mandate that class members have uniform or identical claims." *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal. 4th at 333.)

Here, Plaintiff maintains that common issues of fact and law predominate as to the claims. Plaintiff asserts that all class members had similar job duties (within their specific job categories) as hourly employees, and were subject to similar practices regarding non-compliant meal and rest periods, unpaid wages, and resulting derivative claims for penalties. As a result, the claims arise from Defendant's alleged uniform practices and policies. There would appear to

be no questions of law which would vary from employee to employee. Additionally, the majority of factual differences would be in the area of damages.

Finally, Defendant conditionally stipulates that for purposes of this motion, class certification is appropriate.

VI. THE PRESUMPTION OF FAIRNESS

Courts respect the integrity of counsel and presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. *Hemphill v. San Diego Ass'n of Realtors* (S.D. Cal. 2004) 225 F.R.D. 616, 621. In short, courts operate under the presumption of fairness when the settlement is the result of arm's length negotiation, investigation and discovery are sufficient to permit counsel and the court to act intelligently and counsel are experienced in similar litigation. *In Re Microsoft Cases* (2006) 135 Cal.App.4th 706, 723. Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. Additionally, the court should not "reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of

litigation, and have obtained substantial data from the opposing party. *7-Eleven Owners, supra*, 85 Cal.App.4th at 1151-1152.

VII. REASONABLENESS OF SETTLEMENT AMOUNT

The gross settlement figure is \$750,000.00. Divided by 1,040 class members, the gross settlement amount is approximately \$721 per class member (regardless of duration of employment). Divided by 354 *current* employees at any given time, the gross settlement amount is approximately \$2,118 per full time position.

Plaintiff believes that, given the nature of the claims, the defenses to them, the risks regarding certification and possible obstacles to proceeding, this settlement represents a discount that is fair, reasonable, and in the best interests of the class. There are several factors motivating settlement from the Plaintiff's perspective:

A. Risks Regarding Class Certification.

Initially, there are the inherent risks of litigation and the risks related to the Plaintiff's contemplated motion for class certification. Plaintiff believes that a motion for class certification would be meritorious. However, Plaintiff is also not blind to the risks involved. Plaintiff considered these risks in evaluating the claims.

1. Meal Periods

The fact that the company does not have a non-compliant meal period and rest break policy creates a substantial hurdle to class certification. Defendant will argue that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with

1 regard to the meal break claim is the reason that a particular employee may have failed to take a
2 meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641; *see also In*
3 *re Walgreen Co. Overtime Cases* (2014) 231 Cal.App.4th 437, 443 (one must “ask why the
4 worker missed the break before you can determine whether the employer is liable”). As a result,
5 Defendant would make the case that determination as to the reasons for the violations (fault of
6 the employer vs. employee choice) would be an individual inquiry with regard to each employee,
7 thereby making individual questions outweigh common questions. Defendant will argue this
8 inquiry would vary not only from person to person, but based on department and position.
9 Plaintiff accounted for these risks should this case proceed and discounted this claim
10 accordingly.

11 **2. Rest Breaks**

12 Plaintiff contends that Class Members often could not take duty-free rest breaks, as
13 required by the California Supreme Court in *Augustus v. ABM Security Servs., Inc.* (2016) 5
14 Cal.5th 257.
15

16 However, Plaintiff understands there are substantial risks to proceeding on this claim.
17 Much like meal periods, an employer must “authorize and permit” rest breaks, but it need not
18 ensure all rest breaks are taken. I.e., a rest break voluntarily skipped by an employee does not
19 constitute a violation.
20

21 Additionally, there is no requirement to record rest breaks. As a result, absent evidence of
22 a company policy discouraging rest breaks, Defendant will argue that such claims are not
23 amenable to certification. *See, e.g., Ordonez v. Radio Shack*, 2013 WL 210223, at *12 (C.D. Cal.
24 Jan. 17, 2013) (noting that given lack of recorded rest breaks, there would be challenges
25 regarding “method for proving when class members were or were not authorized and permitted
26
27

to take a rest break.”). For these reasons, Plaintiff believes that there are significant risks to proceeding on this claim, and that the prospects of both certification and proving damages at trial are minimal at best.

3. Unpaid Wages

Plaintiff contends some employees worked off the clock at times. Defendant will likely argue that such claims are, like rest break claims, problematic in the context of a class action, on account of limited nature of the timekeeping records available, and, moreover, because there are no records of the time worked “off the clock.” *See Brinker*, 53 Cal.4th at 1051 (denying certification on claim, noting plaintiff must produce “substantial evidence of a systematic company policy to pressure or require employees to work off-the-clock” to demonstrate that such claims are common to the group.)

Defendant will also likely argue that it lacked knowledge of any off the clock work, which is a defense against liability. *See, e.g., Forrester v. Roth’s I.G.A. Foodliner, Inc.* (9th Cir. 1981) 646 F.2d 413 (“where an employer has no knowledge that an employee is engaging in overtime work and that employee fails to notify the employer ... of the overtime work, the employer’s failure to pay for the overtime hours is not a violation of [the Labor Code].”) As a result, Plaintiff believes that there are significant risks to proceeding on this claim, and Plaintiff ascribed minimal value to this claim.

4. Derivative Claims and PAGA Claims

Plaintiff’s claims for violation of Labor Code Sections 226 (earnings statements) and 203 (failure to pay all wages due at termination) are derivative of the meal period and rest break claims. If the underlying claims fail on class certification, summary judgement, or at trial, the derivative claims will fail as well.

Should Plaintiff be successful on the underlying claims, the derivative claims have additional elements that must be established. The Section 226 claim requires that the failure to comply must have been “knowing and intentional.” Lab. Code § 226(e). The 203 claim requires that the failure to pay all wages due was “willful.” Lab. Code § 203(a). A good faith belief in a legal defense precludes any finding of willfulness. *Gonzalez v. Downtown LA Motors* (2013) 215 Cal. App. 4th 36, 54. If the company is able to establish that it believed that it was doing everything necessary to comply with meal period and rest break requirements, these penalties will not be available.

Plaintiff’s PAGA claims are also derivative of the underlying claims and present the same risks, plus additional risks. For example, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award substantially). As set forth above, Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty.

For these reasons, the amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500).

B. Other Factors

1 Litigating and proving the amount of wages due to each individual class member would
2 be an expensive, time-consuming, and extremely uncertain proposition. With regard to meal
3 periods, as set forth above, the company's policies are compliant. Liability and damages would
4 likely vary from employee to employee based upon the employees' and supervisors' testimony.

5 Additionally, establishing violations and proving the amount due would be very difficult
6 or even impossible to accomplish. Obtaining the cooperation of current employees would likely
7 prove to be a difficult task, given the reluctance to openly aid the prosecution of a lawsuit against
8 the company. In contrast is the relative ease with which the company is able to obtain the
9 cooperation of its employees.
10

11 Finally, this class action is, from a practical point of view, the only avenue of recovery
12 that is reasonably likely to result in any recovery for employees of Defendant. Without this
13 Class Action, Defendant will end up paying only a small fraction (if anything at all) of the
14 money that Plaintiff contends is due and owing to Class Members.
15

16 **VIII. THE CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE**
17 **AND STANDARD IN CLASS ACTIONS**

18 The Settlement Agreement provides for an enhancement for the Class Representative in
19 an amount up to \$10,000.00. The information provided by the Class Representative was
20 instrumental in litigating the wage and hour violations alleged in this action, and the recovery
21 provided for in the Settlement Agreement would have been impossible to obtain without her
22 willingness to act as a class representative. This Class Action would not have been possible
23 without the aid of the Class Representative, who put her own time and effort into this litigation,
24 and placed herself at personal and financial risk for the sake of the class members.
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Furthermore, the enhancement is also necessary to provide motivation for individuals such as Plaintiff to bring an action on behalf of the other employees, incurring the additional time and expense involved. If the Plaintiff's own individual wage and hour claims will not be paid in full, which is usually the case, asking individuals such as Plaintiff to give up part of their own claims would make bringing a class action an extremely difficult proposition, from a practical perspective. Class actions entail not only the expenditure of time and money, but also risks, including risks to current or future employment, and the risk of a potentially devastating cost judgment if the action is ultimately unsuccessful.

Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. Enhancements are especially appropriate where the plaintiffs are present or past employees whose present positions or employment credentials or recommendation may be at risk by reason of having prosecuted the suit, who therefore lend their names and efforts to the prosecution of litigation at some personal peril. *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F.Supp. 185. In this case, obtaining recovery for the class would have been impossible without the participation and involvement of the Class Representative, and the risks she undertook on behalf of the absent class members. An incentive award of \$10,000.00 is reasonable to compensate her for her willingness to pursue and assist in this litigation, which would not have been possible without her contribution.

IX. ATTORNEYS FEES AND COSTS

The Settlement Agreement provides for attorneys' fees to Class Counsel of 1/3 of the gross settlement (\$250,000 in fees) and litigation costs and expenses, estimated to be not more

1 than approximately \$15,000. The contingency fee percentage is less than Class Counsels'
2 contingency fee percentage charged in other employment cases. The fee is supported by the
3 "common fund theory," where "one who expends attorneys fees in winning a suit which creates a
4 fund from which others derive benefits, may require those passive beneficiaries to bear a fair
5 share of the litigation costs." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35. See also *Quinn v. State*
6 *of California* (1975) 15 Cal.3d 162, and *Samura v. Kaiser Foundation Health Plan, Inc.* (1993)
7 17 Cal.App.4th 1284. The percentage of the gross fund method of calculation is supported by a
8 number of federal cases, including *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478; *Mashburn v.*
9 *National Healthcare, Inc.* (1988) 684 F.Supp. 679; *In re Hill* (9th Cir. 1985) 775 F.2d 1037. The
10 percentage is also properly based upon the gross settlement. *Williams v. MGM-Pathe*
11 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026; *Boeing v. Van Gemert, Id.*

13 Attorney fee applications in class actions based upon a percentage of a common fund
14 have substantial support by the Ninth Circuit Court of Appeals, as well as various state courts.
15 See, e.g., *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268; and
16 *Washington Public Power Supply Secur. Lit. v. City of Seattle* (9th Cir. 1994) 19 F.3d 1291.
17 Other Federal Courts of Appeals, such as the Eleventh Circuit and the D.C. Circuit, mandate use
18 of the percentage method. *Camden I Condominium Ass'n v. Dunkle* (11th Cir. 1991) 946 F.2d
19 768, 774; *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1271.

21 In the case at hand, the fee and costs provisions are clearly reasonable. Class counsel are
22 qualified to handle this litigation because they are experienced in litigating Labor Code
23 violations in both single and class actions. Class Counsel are attorneys generally representing
24 the plaintiffs' side in employment cases, currently handling a number of wage and hour class
25 actions.
26

More specifically, Rastegar Law Group, APC (and its predecessor firm Rastegar & Matern), has litigated many cases against some of the largest firms in the country. The attorneys making up the firm have litigated numerous Plaintiffs' wage and hour class action cases, as well as individual employment cases.

The firm's attorneys are all actively and continuously practicing in employment litigation, representing almost entirely employee Plaintiffs, in both individual and class actions, in Superior Courts throughout the State, in the Court of Appeal, and in various Federal courts.

Thus, Class counsel are "qualified, experienced, and generally able to conduct the proposed litigation" as required under existing law. *Miller v. Woods* (1983) 148 Cal. App. 3d 862, 874.

The efforts of Class Counsel have resulted in substantial benefits to the settlement class, in the form of a substantial settlement fund established to compensate settlement class members for unpaid wages, and meal period and derivative violations. Without the efforts of Class Counsel, the Labor Code and Wage Order violations alleged in the Complaint would have gone completely unremedied. The percentage fee requested (33 1/3%) is reasonable given the result achieved.

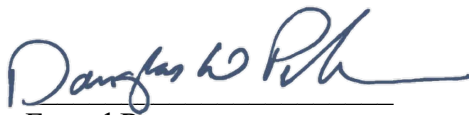
X. CONCLUSION

The Settlement Agreement is fair and reasonable, and represents an excellent opportunity for the employees of Defendant to obtain recovery for unpaid wages, and for meal and rest period and derivative violations. The gross settlement amount, \$750,000, is approximately \$2,118 per full time position (354 full time employees at any given time). For the reasons set forth above and in the Class Action Settlement Agreement filed concurrently herewith, Plaintiff

1 respectfully requests that her Motion for Preliminary Approval of Class Action Settlement be
2 granted.

3 Dated: March 1, 2022

4 RASTEGAR LAW GROUP, A.P.C.

5
6 By: 
7 Farzad Rastegar
8 Douglas W. Perlman
9 *Attorneys for Plaintiff Dalila Valencia*

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RASTEGAR LAW GROUP, APC

DECLARATION OF DOUGLAS W. PERLMAN

1
2 1. I am an attorney at law, licensed to practice in the State of California, with
3 Rastegar Law Group, counsel of record for Plaintiff herein. Unless otherwise indicated by
4 context, I have personal knowledge of the facts set forth herein, and if called upon, could and
5 would testify competently thereto. As to those facts stated on information and belief, I believe
6 them to be true.

7
8 2. This is a wage and hour class action alleging meal period and rest break
9 violations, non-compliant wage statements, overtime and straight time violations, failure to
10 timely pay wages upon termination, as well as a representative action for civil penalties under
11 PAGA, and California’s Unfair Competition Law (“UCL”).

12 3. The case was filed in March, 2021. Thereafter, the parties agreed to mediate the
13 case with Louis Marlin, Esq. In advance of the mediation, Defendant supplied my office with
14 time and payroll documents, as well as other information, documents, and data we requested.
15 Our expert, Aaron Woolfson, analyzed the data and provided his analysis for use in the
16 mediation.
17

18 4. The parties held an all-day session of mediation with Louis Marlin on August 31,
19 2021. The mediation ended with a mediator’s proposal, which was accepted by the parties.

20 5. On information and belief, during the class period, Defendant has operated a non-
21 profit health care organization. Plaintiff was employed by Defendant, and worked as a non-
22 exempt, hourly employee. Plaintiff’s core allegations include that she was not provided with
23 compliant meal periods and rest breaks while employed by Defendant, that she was not paid all
24 of the wages to which she was entitled, and that she received non-compliant wage statements.
25
26
27

Plaintiff pursues derivative claims under the California Labor Code, PAGA, and the UCL on this basis.

6. The settlement agreement in the pending action involves a class of: “All non-exempt employees of Vista Hill Foundation in California at any time from March 17, 2017, through December 29, 2021.”

7. The terms of the Settlement agreement are as follows:

- Defendant shall pay a total sum not to exceed \$750,000.00;
- Attorneys’ fees of not more than one-third of the gross settlement fund, to be paid from the Settlement;
- Class Counsels’ litigation costs, of not more than \$15,000.00, to be paid from the Settlement;
- An Enhancement in the amount of \$10,000 to the class representative, to be paid from the Settlement;
- Costs of Settlement Administration, of up to \$15,000.00, to be paid from the Settlement;
- PAGA payment in the total amount of \$30,000, 75% of which will be paid to the California Labor & Workforce Development Agency, the remaining 25% to be paid to the PAGA representative group.
- Automatic payment to class members (i.e., no claims forms used, no reversion to Defendant).

8. The Settlement Agreement provides that each Settlement Class Member shall be entitled to a portion of the net settlement fund based upon the number of workweeks the Settlement Class Member met the criteria for inclusion in the Settlement Class. Each Class

Member shall receive payment of a pro rata portion of the total combined work weeks of all the Settlement Class Members. By way of example, if the net settlement fund is \$400,000, and there are a total of 80,000 workweeks between all Settlement Class Members, if Class Member “A” has 100 workweeks, Class Member A’s portion of the net settlement fund would be \$500.00 [$\$400,000 \div 80,000 \text{ workweeks} = \$5.00 \times 100 = \$500.00$].

9. The Class Settlement Payment to each Class Member will be apportioned as 33 1/3% wages, and 66 2/3% penalties and interest. The PAGA payment to each PAGA Group Member will be treated as 100% penalties.

10. Settlement checks will remain valid for a period of 180 days. After expiration of that period of time, any remaining uncashed checks will be distributed consistently with California Code of Civil Procedure Section 384.

11. The complete settlement agreement is set forth in the Joint Stipulation of Class Action Settlement filed concurrently herewith.

12. Defendant produced time and payroll data, as well as relevant policy documents, for the class. The data was analyzed by our expert, Aaron Woolfson. A summary of the relevant data is as follows:

Class Member and Shift Data

Class Members:	1,040
Class Members Currently Employed:	354
PAGA Representative Group:	1,040
Average hourly rate of pay:	\$18.00
Total number of shifts over five hours:	90,255

Wage Order Meal Period Compliance – Shifts Greater Than Five Hours

(Includes Meal Periods Subject to Waiver by Agreement)

No meal period:	37,152
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Wage Order Meal Period Compliance – Shifts Greater Than Six Hours

(Not Subject to Waiver by Agreement)

No meal period:	16,045
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Wage Order Meal Period Compliance – Shifts Greater Than Five Hours

(Includes All Meal Period Eligible Shifts)

Late and/or Short meal period:	9,047
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13. Based upon the data set forth above, our calculation of maximum potential damages on the meal period claims is as follows:

- No meal period recorded (including meal periods subject to waiver): 37,152
- No meal period recorded (not including meal periods subject to waiver): 16,045
- Late and/or short meal period recorded: 9,047
- Total Meal Period violations:
 46,199 (including waivable meal periods)
 25,092 (not including waivable meal periods)
- 46,199 violations x \$18.00 (average hourly rate) = **\$831,582.00**
- (alternatively) 25,092 non-waivable violations x \$18.00 (average hourly rate) =
 \$451,656.00

15. Employers in California are not required to record rest breaks. On information and belief, Defendant did not record rest breaks. Therefore, in my experience, evidence supporting the claim for rest break violations would have to be based upon anecdotal evidence, making rest break penalties extremely difficult to calculate with any precision and to prosecute on a class basis.

17. Given the foregoing, we discounted the rest break and wage claims premised on off the clock work, and ascribed minimal value to them relative to the other claims.

- 90,255 shifts x \$18.00 average hourly rate = **\$1,624,590.**

28

20. The Labor Code § 226 claim is derivative of the other claims, such as the meal period claim. Section 226 provides for a civil penalty of \$50 per pay period in which a compliant wage statement is not provided, and a \$100 civil penalty thereafter, with a cap of \$4,000 per employee. Our expert analysis applied this formula to Defendant’s payroll for the relevant time period, and the calculation of the maximum potential Section 226 penalties which could be awarded, for all employees, equals **\$160,950.00**.

21. The Labor Code §203 claim is derivative of the meal period, rest break, and off the clock claims. The calculation for an employee earning the average rate of pay would be: \$18.00 x 8 hours x 30 days = \$4,320.00. Multiplying that figure by 686 former employees yields a total maximum of **\$2,963,520.00**. In my opinion, to prevail on a Section 203 claim, Plaintiff would have to demonstrate that the failure to pay all wages due was “willful.” In my opinion, in the context of a Section 203 claim relying upon meal period and rest break penalties, in which an employee’s decision to forgo meal periods or rest breaks negates the claim, a good-faith defense would be difficult to overcome.

22. Plaintiff also has a claim for civil penalties pursuant to California Labor Code § 2699, et seq. Assuming a violation per pay period, the maximum potential penalties under PAGA, calculated by Plaintiff’s expert, are: **\$453,300.00**.

23. The parties have proposed that the Court conditionally, pursuant to the terms of the settlement agreement, certify the following class of plaintiffs:

“All non-exempt employees of Vista Hill Foundation in California at any time from March 17, 2017 through December 29, 2021.”

1 24. In my opinion, the requirements for class certification are present. On
2 information and belief, Defendant employed approximately 1,040 class members over the
3 duration of the class period.

4 Plaintiff contends that Defendant had a practice of failing to pay wages owed for non-
5 compliant meal and rest periods, including missed, short and late meal periods, in addition to
6 other, less substantial violations, and as a result, Defendant committed related derivative
7 violations of the Labor Code. Plaintiff, like other putative class members, was employed by
8 Defendant in similar capacities, and contends she suffered similar violations of law. As such,
9 Plaintiff contends her claims are typical of the class.
10

11 I am informed and believe that Plaintiff is a former employee of Defendant, who has
12 alleged she was subjected to the illegal policies and practices alleged in the complaint. Plaintiff
13 has been instrumental in providing the information and evidence used to bring the action and the
14 settlement. I am informed and believe that there is no conflict between the Plaintiff and the
15 class.
16

17 In my opinion, common issues of fact and law predominate as to the claims. I am
18 informed and believe that all class members had similar job duties (within their specific job
19 categories) as hourly employees, and were subject to similar practices regarding non-compliant
20 meal and rest periods, unpaid wages, and resulting derivative claims for penalties. I am aware of
21 no questions of law which would vary from employee to employee. In my opinion, the majority
22 of factual differences would be in the area of damages.
23

24 25. In my opinion, the Settlement Agreement in this matter is fair and reasonable, and
25 in the best interests of the Class. The gross settlement figure is \$750,000.00. Divided by 1,040
26 class members, the gross settlement amount is approximately \$721 per class member (regardless
27

1 of duration of employment). Divided by 354 *current* employees at any given time, the gross
2 settlement amount is approximately \$2,118 per full time position. There are several factors
3 motivating settlement from the Plaintiff's perspective:

4 26. Initially, there are the inherent risks of litigation and the risks related to the
5 Plaintiffs' contemplated motion for class certification. In my opinion, a motion for class
6 certification would be meritorious. However, we are also not blind to the risks involved. Class
7 Counsel considered these risks in evaluating the claims and the proposed settlement.
8

9 27. In my opinion, the fact that the company does not have a non-compliant meal
10 period policy creates a substantial hurdle to class certification. I am informed and believe that
11 Defendant would argue that, to establish a violation for missed meal periods, a plaintiff must do
12 more than show that a meal break was not taken. Instead, a plaintiff must show the employer
13 impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise
14 failed to release the employee of all control. As a result, Defendant would make the case that
15 determination as to the reasons for the violations (fault of the employer vs. employee choice)
16 would be an individual inquiry with regard to each employee, thereby making individual
17 questions outweigh common questions. Defendant would argue this inquiry would vary not only
18 from person to person, but based on department and position. Plaintiff accounted for these risks
19 should this case proceed and discounted this claim accordingly.
20

21 28. Plaintiff contends that Class Members often could not take duty-free rest breaks,
22 as required by the California Supreme Court in *Augustus v. ABM Security Servs., Inc.* (2016) 5
23 Cal.5th 257. However, in my opinion, there are substantial risks to proceeding on this claim.
24 Much like meal periods, an employer must "authorize and permit" rest breaks, but it need not
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ensure all rest breaks are taken. I.e., a rest break voluntarily skipped by an employee does not constitute a violation.

Additionally, there is no requirement to record rest breaks. As a result, absent evidence of a company policy discouraging rest breaks, Defendant will argue that such claims are not amenable to certification. For these reasons, in my opinion, there are significant risks to proceeding on this claim.

29. Plaintiff contends some employees worked off the clock at times. I am informed and believe that Defendant would argue that such claims are, like rest break claims, problematic in the context of a class action, on account of limited nature of the timekeeping records available, and, moreover, because there are no records of the time worked “off the clock.” Furthermore, I am informed and believe that Defendant would also assert that it lacked knowledge of any off the clock work, which is a defense against liability. As a result, in my opinion, there are significant risks to proceeding on this claim.

30. Plaintiff’s claims for violation of Labor Code Section 226 (earnings statements) and 203 (failure to pay all wages due at termination) are derivative of the meal period and rest break claims. Therefore, I am informed and believe that, if the underlying claims fail on class certification, summary judgement, or at trial, the derivative claims will fail as well. Furthermore, in my opinion, should Plaintiff be successful on the underlying claims, the derivative claims have additional elements that must be established. The Section 226 claim requires that the failure to comply must have been “knowing and intentional.” The 203 claim requires that the failure to pay all wages due was “willful.” In my opinion, a good faith belief in a legal defense precludes any finding of willfulness.

1 31. Plaintiff's PAGA claims are also derivative of the underlying claims, and, in my
2 opinion, present the same risks, plus additional risks. For example, PAGA states a court has
3 discretion to award a lesser amount than the maximum penalty. As set forth above, Defendant
4 has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations.
5 Thus, in my opinion, the PAGA claims likewise face significant uncertainty. Additionally, in my
6 opinion, the amount to be paid to the LWDA comports with PAGA settlement amounts approved
7 by other courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011
8 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common
9 fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving
10 PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
11 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
12 settlement of 0.3% or \$1,500).
13

14 32. In my opinion, litigating and proving the amount of wages due to each individual
15 class member would be an expensive, time-consuming, and extremely uncertain proposition.
16 With regard to meal periods, as set forth above, I am informed and believe that the company's
17 policies are compliant. There is therefore a significant risk of a finding that liability would vary
18 from employee to employee based upon the employees' and supervisors' testimony.
19 Additionally, in my opinion, establishing violations and proving the amount due would be very
20 difficult to accomplish, given the employment status of many class members. In my opinion,
21 obtaining the cooperation of current employees would prove to be a difficult task, given the
22 reluctance to openly aid the prosecution of a lawsuit against the company. In contrast is the
23 relative ease with which the company would be able to obtain the cooperation of its employees.
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33. In my opinion, this class action is, from a practical point of view, the only avenue of recovery that is reasonably likely to result in any recovery for employees of Defendant. I am informed and believe that, without this Class Action, Defendant will end up paying only a small fraction (if anything at all) of the money that Plaintiff contends is due and owing to Class Members.

34. The Settlement Agreement also provides for an enhancement for the Class Representative in the amount up to \$10,000.00. In my opinion, the information provided by the Class Representative was instrumental in litigating the wage and hour violations alleged in this action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without her willingness to act as class representative. In my opinion, this Class Action would not have been possible without the aid of the Class Representative, who put her own time and effort into this litigation, and placed herself at personal and financial risk for the sake of the class members. Furthermore, I am informed and believe that the enhancement is also necessary to provide motivation for individuals such as Plaintiff to bring an action on behalf of the other employees, incurring the additional time and expense involved. If the Plaintiff's own individual wage and hour claims will not be paid in full, which, in my experience, is usually the case, asking individuals such as Plaintiff to give up part of their own claims would make bringing a class action an extremely difficult proposition, from a practical perspective. Class actions entail not only the expenditure of time and money, but also risks, including risks to current or future employment, and the risk of a potentially devastating cost judgment if the action is ultimately unsuccessful. In my opinion, an incentive award of \$10,000.00 is reasonable to compensate Plaintiff for her willingness to pursue and assist in this litigation, which would not have been possible without her contribution.

35. The Settlement Agreement provides for attorneys' fees to Class Counsel of 1/3 of the gross settlement (\$250,000 in fees) and litigation costs and expenses, estimated to be not more than approximately \$15,000. The contingency fee percentage is less than my firm's contingency fee percentage charged in other employment cases. In my opinion, the fee and costs provisions are clearly reasonable. My firm is qualified to handle this litigation because we are experienced in litigating Labor Code violations in both single and class actions. We are attorneys generally representing the plaintiffs' side in employment cases, currently handling a number of wage and hour class actions. More specifically, Rastegar Law Group, APC (and its predecessor firm Rastegar & Matern), has litigated many cases against some of the largest firms in the country. The attorneys making up the firm have litigated numerous Plaintiffs' wage and hour class action cases, as well as individual employment cases. The firm's attorneys are all actively and continuously practicing in employment litigation, representing almost entirely employee Plaintiffs, in both individual and class actions, in Superior Courts throughout the State, in the Court of Appeal, and in various Federal courts.

36. I received my B.A. in Philosophy from the University of California at Irvine in 1990. I received my J.D. from the University of California at Davis in 1993. I became an active member of the State Bar of California in December, 1993, have been an active member in good standing since then, and am also admitted to practice before all U.S. District Courts in the State of California. I have been continuously active in employment litigation on the plaintiffs' side since January, 1994, and in employment class action litigation since approximately 2004. I have been practicing with Rastegar Law Group, APC, since 2011, and with its predecessor law firm, Rastegar & Matern, since January, 1996.

37. On information and belief, Farzad Rastegar received his B. A. in Economics in 1986 from UCLA. He received his J.D. from Southwestern University School of Law in 1991. He became an Active Member of the State Bar of California in December 1991, and has been an Active Member in good standing continuously since then. He is a lifetime sustaining member of the Consumer Attorneys Association of Los Angeles (CAALA), a current member of the National Employment Lawyers Association (NELA), the California Employment Lawyers Association (CELA), and the National Trial Lawyers' Wage and Hour Trial Lawyers Association. He has also been named as one of the Super Lawyers of Southern California.

38. Mr. Rastegar founded Rastegar Law Group, A Professional Corporation ("Rastegar Law Group") in 2011. Prior to starting Rastegar Law Group, Mr. Rastegar was a founding partner of Rastegar & Matern, Attorneys at Law, A Professional Corporation ("Rastegar & Matern") which was founded in 1999. In 1992, he founded the general partnership which was the predecessor of Rastegar & Matern, Attorneys at Law, A Professional Corporation, where he acted as the managing partner of the firm since its inception.

39. Rastegar Law Group, and Rastegar & Matern previously, have both had a heavy emphasis on employment and related litigation. The attorneys at Rastegar Law Group have been heavily, successfully, and continuously involved in active litigation and trial work, including without limitation, wage and hour class action litigation, employees' rights, civil rights, discrimination, and sexual harassment claims, and other forms of employment litigation.

40. Including myself, Rastegar Law Group includes six attorneys, all of whom are actively and continuously practicing in employment litigation, representing almost entirely employee plaintiffs, in both individual and class actions, in this Superior Court, and other Superior Courts throughout the State, in the Court of Appeal, and in various Federal courts. The attorneys at Rastegar Law Group have litigated hundreds of cases against the largest firms in the country, including but not limited to Gibson Dunn & Crutcher, O'Melveny & Myers, Morrison & Foerster, Littler Mendelson, Jackson Lewis LLP, Kecker & Van Nest, DLA Piper and Skadden Arps. Because of the unique history and nature of our practice, all of the attorneys at Rastegar Law Group have a high level of knowledge and experience in areas of wage and hour class actions, and labor and employment law. Currently, more than half of Rastegar Law Group's active caseload includes wage and hour class action cases. In addition to the foregoing, Rastegar Law Group currently includes attorneys with the following qualifications:

- a. Thomas S. Campbell, Southwestern University School of Law, over 22 years of litigation experience;
- b. Danielle E. Sherrod, Stanford University Law School, over 17 years of experience;
- c. Rose Sorial, Trinity Law School, ninth-year litigation associate.
- d. Aja Taormina, University of Southern California Law School, eleventh-year litigation associate.

41. Rastegar Law Group is qualified to handle this litigation because we are experienced in litigating Labor Code violations in both individual and class actions. I and the other attorneys at my office have served as class counsel in numerous wage and hour

class actions, and have successfully negotiated numerous settlements, including high seven-figure cases, amounting to over \$100 million in settlements.

42. Rastegar Law Group has published appellate victories, which have significantly advanced the rights of employees, including *Yocupicio v. PAE Group, LLC, et al.* (9th Cir. 2015) 795 F.3d 1057 (holding that non-class claims, such as claims under the California Private Attorney General Act, cannot be sued to calculate CAFA's amount in controversy); *Rodriguez v. EME, Inc.* (2016) 246 Cal.App.4th 1027 (defining the permissibility of combining rest periods) – as well as other non-published appellate victories.

43. Our predecessor firm, Rastegar & Matern, had a number of published appellate victories including several published opinions - *Franco v. Athens Disposal Company, Inc.* (March 10, 2009) 171 Cal.App.4th 1277; *Gutierrez v. California Commerce Club* (August 2, 2010) 187 Cal.App.4th 969; *Pantoja v. Anton* (August 9, 2011) 198 Cal.App.4th 87; *Fuentes v. Autozone, Inc.* (November 16, 2011) 200 Cal.App.4th 1221; *Ventura v. ABM Industries, Inc.* (2012) 212 Cal.App.4th 258; *Franco v. Arakelian Enterprises, Inc.* (2012) 211 Cal.App.4th 314 – and other non-published appellate victories. Moreover, Rastegar & Matern was successful in procuring class certification of a number of wage and hour class action lawsuits, i.e., *Gutierrez v. Dynaflex Products*, Case No. BC 368749; *Garmendia v. Fortune Fashions Industries, LLC*, Case No. BC 389960; *Mendoza v. National Gypsum Services Company*, Case No. BC366877; two cases in the Superior Court for the County of San Bernardino, including *Oliva v. Coronado Stone*, Case No. CIVSS806131 and *Suchilt v. Syed Irfan Ahmad*, Case No. CIVDS1010505; one in the Superior Court for the County of Los Angeles, *Gutierrez v. California Commerce Club*,

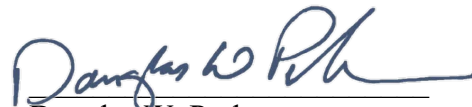
Case No. BC360704; one in the Superior Court for the County of Riverside, *Sanchez v. Jose's Mexican Food, Inc.*, Case No. RIC1213710; and one in the District Court for the Southern District of California, *Hines v. KFC U.S. Properties, Inc.*, Case No. 3:09-cv-02422.

44. In my opinion, the efforts of my firm have resulted in substantial benefits to the settlement class, in the form of a substantial settlement fund established to compensate settlement class members for unpaid wages, and meal period and derivative violations. Without the efforts of Class Counsel, in my opinion, the Labor Code and Wage Order violations alleged in the Complaint would have gone completely unremedied.

45. In my opinion, the Settlement Agreement is fair and reasonable, and represents an excellent opportunity for the employees of Defendant to obtain recovery for unpaid wages, and for meal period and derivative violations. I am informed and believe that the gross settlement amount, \$750,000, is approximately \$2,118 per full time position (354 full time employees at any given time), and is fair, reasonable, and in the best interests of the Class.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2022, at Torrance, California.


Douglas W. Perlman
Attorney for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 years, and not a party to this action. My business address is 22760 Hawthorne Blvd., Suite 200,
4 Torrance, California 90505.

5 On March 1, 2022, I served the following document or documents:

6 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS**
7 **ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES;**
8 **DECLARATION OF DOUGLAS W. PERLMAN IN SUPPORT THEREOF**

- 8 ☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the person at
9 the e-mail addresses listed below. I did not receive, within a reasonable time after the
10 transmission, any electronic message or other indication that the transmission was
11 unsuccessful.

12 **Service List**

11 Kathleen Mary Kushi Carter, Esq. 12 MESSNER REEVES LLP 13 610 Newport Center Drive, Suite 420 14 Newport Beach, CA 92660 15 Tel.: (949) 612-9128 16 Fax: (310) 889-0896 17 Email: kcarter@messner.com	Attorney for Defendant, VISTA HILL FOUNDATION
15 Charles C. Cavanagh, Esq. 16 MESSNER REEVES LLP 17 1430 Wynkoop Street, Suite 300 18 Denver, CO 80202 19 Tel.: (303) 623-1800 20 Fax: (303) 623-0552 21 Email: ccavanaugh@messner.com	Attorney for Defendant, VISTA HILL FOUNDATION

- 20 ☒ **By electronic transmission.** Pursuant to California Labor Code section 2699(1)(4), I
21 caused the documents to be sent to the person or entity listed below via
22 [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
23 [Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) the online filing system established by the California Labor & Workforce
24 Development Agency for the submission of proposed settlements of civil actions filed
25 pursuant to California Labor Code sections 2698, et seq. I did not receive, within a
26 reasonable time after the transmission, any electronic message or other indication that the
27 transmission was unsuccessful.

28 **Service List**

25 PAGA Administrator 26 California Labor & Workforce 27 Development Agency 28 1515 Clay Street, Suite 801 Oakland, CA 94612 PAGA@dir.ca.gov	Address of Record presented by the LWDA to timely process all PAGA related notices and correspondences
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(State) I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2022, at Torrance, California.



Jessica T. Moreno