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

MARTHA LIZAOLA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HAWAIIAN HOST CANDIES OF L.A. INC., a
California corporation; and DOES 1 through 100,

Defendants.

Case No. 21STCV20136

*[Assigned for all purposes to Hon.
Carolyn B. Kuhl, Dept. SSC-12]*

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

Date: January 12, 2023

Time: 10:30 a.m.

Dept.: SSC-12

Complaint Filed: May 27, 2021

Trial Date: None

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 12, 2023 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department SSC-12 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Martha Lizaola (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement”) between Plaintiff and Defendant Hawaiian Host Candies of LA LLC formerly known as Hawaiian Host Candies of L.A. Inc. (“Hawaiian Host” or “Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:

All current and former non-exempt employees who worked for Defendant in California from May 27, 2017 until August 17, 2022 (the “Class Period”), and who did not sign a “Separation Agreement and General Release.”
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award an amount for an enhancement payment to the Class Representative, attorneys’ fees and costs to Class Counsel, settlement administration costs, and the payment to the Labor & Workforce Development Agency (“LWDA”) for its share of civil penalties;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and Notice of Estimated Settlement Award (together, the “Notice Packet”), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement Agreement.

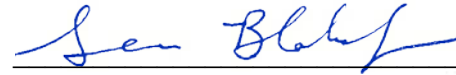
This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Sean M. Blakely and exhibits attached thereto; the declarations of Paul K. Haines and Alexandra R. McIntosh; the declaration of Jodey Lawrence of Phoenix

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

4
5 Dated: November 30, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

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7 By:



Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Martha Lizaola (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Hawaiian Host Candies of LA LLC, formerly known
5 as Hawaiian Host Candies of L.A., Inc. (“Hawaiian Host” or “Defendant”) (collectively with
6 Plaintiff, the “Parties”). The Settlement resolves a class and representative action pending before
7 this Court (the “Action”), in which Plaintiff alleges that Hawaiian Host: (i) failed to pay all earned
8 wages due to its allegedly unlawful policy/practice of rounding employee time entries, (ii) failed
9 to provide all required meal periods, (iii) failed to authorize and permit all required rest periods,
10 and (iv) violated the WARN Act by failing to provide Plaintiff and other former employees with
11 reasonable notice of their termination. Plaintiff further alleges that as a result of these violations,
12 Hawaiian Host failed to issue accurate itemized wage statements, failed to timely pay all final
13 wages, and is liable for civil penalties under the Labor Code Private Attorneys General Act
14 (“PAGA”), Labor Code § 2698 *et seq.*¹

15 Plaintiff now respectfully requests that this Court preliminarily approve this non-
16 reversionary, common-fund class action Settlement,² in which Hawaiian Host has agreed to pay
17 a Maximum Settlement Amount of \$140,000.00 to the following Settlement Class, which is
18 estimated to consist of 38 individuals:

19 All current and former non-exempt employees who worked for Defendant
20 in California from May 27, 2017 until August 17, 2022 (the “Class Period”),
and who did not sign a “Separation Agreement and General Release.”

21 The Settlement was reached after the Parties engaged in mediation with Lou Marlin, Esq.,
22 an experienced wage and hour class action mediator. In connection with mediation, Hawaiian
23

24 ¹ Plaintiff’s proposed Second Amended Class and Representative Action Complaint (“SAC”) pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) unfair competition; (8) civil penalties under the PAGA; (9) violation of the California WARN Act; (10) violations of the WARN Act; and (11) violation of the Fair Labor Standards Act (“FLSA”).

25 ² The Stipulation of Settlement (“Settlement”) is attached as Exhibit 1 to the Declaration of Sean M. Blakely (“Blakely Decl.”). The proposed Class Notice and Notice of Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement Agreement.

Host provided Plaintiff with extensive informal discovery, including a class list with all putative class members' hire dates, termination dates, and other information; a sampling of timekeeping records for putative class members (including actual time punches, so that Plaintiff could perform a rounding analysis); a spreadsheet containing all meal period premiums paid; and Hawaiian Host's relevant written wage and hour policies. After extensive research and analysis, including a detailed evaluation of Hawaiian Host's potential exposure, the Parties attended a full-day mediation with Mr. Marlin on May 19, 2022, which resulted in a class-wide resolution of Plaintiff's claims. The long-form Settlement Agreement was drafted and executed over the following months and is now submitted to this Court for approval.

Significantly, Settlement Class members do not need to file a claim to reap the financial benefits of the Settlement as Individual Settlement Payments will be distributed to all Settlement Class members who do not affirmatively opt out. After deductions for proposed settlement administration costs, attorneys' fees and costs, the amount set aside as PAGA civil penalties, and the Class Representative Enhancement Payment, the average Individual Settlement Payment is estimated to be at least **\$1,192.98**³. This is an excellent result for Settlement Class members who will be releasing only those claims that were asserted in this litigation. For the reasons stated herein, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Founded in 1927, Hawaiian Host is the world's largest manufacturer of chocolate covered macadamia nuts. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. During a portion of the Class Period, Hawaiian Host manufactured its chocolates in Gardena, California. *Id.* However, in June 2020, Hawaiian Host permanently closed its Gardena, California location, terminated the majority of its California-based employees, and relocated to Hawaii. *Id.* As part of its closing,

³ In addition to the \$1,192.98 average Individual Settlement Payment from the Net Settlement Amount, the approximately 7 Settlement Class members who worked during the time period from May 27, 2020 until August 17, 2022 ("PAGA Period") will also receive a portion of the PAGA Amount. The average share of the PAGA Amount is estimated to be approximately \$357.14. Blakely Decl., ¶ 13.

1 Hawaiian Host offered its employees severance and release agreements. *Id.* Plaintiff worked for
2 Hawaiian Host as a non-exempt “Packer” from August 1986 to May 22, 2020. *See* Declaration of
3 Martha Lizaola (“Lizaola Decl.”), ¶ 2.

4 On May 27, 2021, Plaintiff filed the instant action against Hawaiian Host alleging claims
5 for failure to pay minimum and overtime wages, failure to authorize and permit rest periods,
6 failure to provide meal periods, failure to issue accurate itemized wage statements, failure to
7 timely pay all final wages, and unfair competition. Blakely Decl., ¶ 9. On August 13, 2021,
8 Plaintiff filed her First Amended Class and Representative Action Complaint to add a cause of
9 action for PAGA civil penalties. *Id.* As part of the Settlement, the Parties are stipulating to the
10 filing of Plaintiff’s Second Amended Class and Representative Action Complaint (“SAC”) which
11 adds causes of action for violations of the California WARN Act, WARN Act, and FLSA. *Id.* The
12 Parties are submitting a Joint Stipulation For Leave to File Second Amended Class and
13 Representative Action Complaint concurrently with this Motion. *Id.*

14 **B. PLAINTIFF’S CLAIMS AND HAWAIIAN HOST’S DEFENSES**

15 **1. Unpaid Wages Due to Time-Rounding**

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

underpaid due to rounding). Hawaiian Host further argues that just because an employee is clocked in does not mean they are *working*. Blakely Decl., ¶ 14. For example, much of the alleged unpaid time was pre-shift (i.e., employees clocked in before the scheduled start of the shift), and Hawaiian Host argues employees do not begin performing work before the start of their shift, and instead engage in personal activities like reading or talking with co-workers before their shift. *Id.* Moreover, Hawaiian Host asserts the amount of unpaid time per shift is *de minimis* and thus non-compensable. *Id.* Hawaiian Host also contends this claim was not certifiable, since its rounding policy is facially neutral and some employees were *overpaid* due to rounding, and individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. *Id.*

2. Meal Period Claim

Plaintiff alleges that Hawaiian Host failed to provide her and other Settlement Class members with legally-compliant meal periods. Blakely Decl., ¶ 15. Specifically, throughout the Class Period, Plaintiff alleges that first meal periods were at times not provided until after the completion of five hours of work due to work demands. *Id.* Plaintiff further contends that meal periods were at times short (i.e., less than 30 minutes). *Id.* Plaintiff also alleges that she and other employees generally were not provided second meal periods on shifts over 10.0 hours. *Id.*

In response, Hawaiian Host contends that it has always maintained compliant written meal period policies throughout the Class Period, and provided all legally-compliant meal periods in line with those policies. Blakely Decl., ¶ 15. Hawaiian Host also argues that under *Brinker*, it was only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken. *Id.*; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard). Further, Hawaiian Host argues that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Blakely Decl., ¶ 15. Moreover, with respect to second meal periods, Hawaiian Host argues that second meal periods may lawfully be waived on shifts of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees did so. Blakely Decl., ¶ 15. Lastly, Hawaiian Host argues

individualized inquiries would be needed to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, making certification of the meal period claim unlikely. *Id*

3. Rest Period Claim

Plaintiff alleges that Hawaiian Host failed to authorize and permit off-duty third rest periods for shifts in excess of 10.0 hours. Blakely Decl., ¶ 16. Hawaiian Host counters that it has maintained compliant written rest period policies and has always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was as a result of employee choice, rather than any Hawaiian Host policy and/or practice. Blakely Decl., ¶ 16. Hawaiian Host further contends that Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why a rest period was missed or otherwise non-compliant. *Id*. These manageability concerns are especially present with respect to rest period claims, Hawaiian Host argues, given that rest periods are not recorded. *Id*.

4. Unpaid Overtime – Failure to Include All Renumeration Into Regular Rate

Plaintiff alleges that Hawaiian Host underpaid Settlement Class members' overtime wages due to its failure to include all remuneration in the regular rate of pay for overtime purposes. Blakely Decl., ¶ 17; *see also* 29 U.S.C. § 207(e) (requiring overtime to be paid at 1.5 times the "regular rate" of pay, which includes "all remuneration for employment paid to, or on behalf of, the employee"); DLSE Manual at § 49.1.2 (California has "adopt[ed] the definition of 'regular rate' set out in the [FLSA]"). Specifically, Plaintiff alleges that Hawaiian Host paid Settlement Class members end-of-the-year "bonuses" with regularity during the Class Period but did not include this payment into Settlement Class members' regular rate of pay for overtime purposes, thereby miscalculating and underpaying Settlement Class members' overtime wages. Blakely Decl., ¶ 17.

In response, Hawaiian Host contends that the additional payments at the end of the year

are discretionary holiday bonuses and thus do not need to be included in the regular rate of pay for overtime purposes. 29 C.F.R. § 778.200(a)(1) (defining the regular rate of pay to include all remuneration for employment paid to the employee while excluding “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.”). Hawaiian Host further contends that the discretionary-holiday bonuses were not tied to employees’ hours worked and therefore do not need to be included in the regular rate. Blakely Decl., ¶ 17; *see also* 29 U.S.C. § 207(e)(2) (payments made to employee which are not compensation for hours of employment need not be included in regular rate of pay); 29 C.F.R. § 778.208 (discretionary bonuses excludable from regular rate).

5. **WARN Act**

Plaintiff contends that Hawaiian Host terminated her and other Settlement Class members as part of a mass lay off but failed to provide her and other Settlement Class members with written notice of at least 60 days in advance of their termination as required by the WARN Act. Blakely Decl., ¶ 18. Hawaiian Host argues it is not liable under the WARN Act because it did not lay off the minimum number of employees within a 30-day window required in order to trigger liability under the WARN Act. *Id.* Additionally, Hawaiian Host argues that the mass lay-off was caused by COVID-19 and, under Executive Order N-31-20, it was only required to give as much notice as is “practicable.” *Id.* Lastly, Hawaiian Host argues that even if the Court were to find that Hawaiian Host violated the WARN Act, Plaintiff’s claim cannot meet the numerosity requirement under Cal. Code Civ. Proc. § 382, as all but seven employees who were terminated between May 2020 and June 2020 accepted severance payments and signed general releases. *Id.*

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

As a result of these alleged wage and hour violations, Plaintiff asserts that Hawaiian Host failed to comply with its final wage payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Blakely Decl., ¶¶ 19-20. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. Blakely Decl., ¶ 21.

Hawaiian Host asserts it has strong, good-faith defenses to Plaintiff’s underlying claims,

precluding imposition of waiting time penalties, which are only available for the “willful” failure to pay wages. Blakely Decl., ¶ 20; see 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time penalties). Hawaiian Host further contends that any alleged wage statement violations could not be shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show she or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab. Code § 226(e); and that the wage statements always accurately reflected amounts *paid* to employees. Blakely Decl., ¶ 19; see *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the employee is fully informed regarding the calculation of those wages’”).

Finally, Hawaiian Host contends the PAGA claim fails because the underlying claims fail. Blakely Decl., ¶ 21; see also *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Hawaiian Host further maintains that given its good-faith defenses, the Court would 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**

In connection with mediation, the Parties engaged in extensive informal discovery. In response to Plaintiff’s informal discovery requests, Hawaiian Host provided Plaintiff with raw punch data for a sampling of Settlement Class members, a list of putative class members with their hire and termination dates, a spreadsheet containing all meal period premiums paid, Hawaiian Host’s written wage and hour policies, and other information and documents. Blakely

Decl., ¶ 10. Plaintiff conducted a comprehensive analysis and extrapolation of the data to calculate Hawaiian Host’s potential exposure for each of Plaintiff’s claims. *Id.* This discovery allowed the Parties to assess the merits and potential value of Plaintiff’s claims and Hawaiian Host’s potential defenses. *Id.*

The Parties attended a full-day mediation on May 19, 2022 with Lou Marlin, Esq., an experienced wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff’s claims, and the legal bases for the claims and defenses. *Id.* With the help of Mr. Marlin, the Parties negotiated and reached a settlement in principle, eventually resulting in the Settlement now before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Hawaiian Host will pay a non-reversionary Maximum Settlement Amount (“MSA”) of \$140,000.00. *See* Settlement, § 3. No Settlement Class member will need to file a claim form as each Settlement Class member will automatically receive an Individual Settlement Payment unless he or she affirmatively opts out. *Id.*, at § 4. The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount (“MSA”):	\$140,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$46,666.66
• Minus Court-approved, verified costs (up to):	\$25,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus Amount designated as PAGA penalties:	\$10,000.00
• Minus <u>estimated settlement administration costs:</u>	<u>\$5,500.00</u>
Net Settlement Amount (“NSA”):	\$45,333.34
<u>PLUS 25% of PAGA penalties (“PAGA Amount”)</u>	<u>\$2,500.00</u>
TOTAL Amount Paid to Settlement Class:	\$47,833.34

1. The Settlement Provides for Reasonable Monetary Payments

After deducting requested administration costs, enhancement payment to Plaintiff, the amount set aside as PAGA civil penalties, and attorneys’ fees and costs, Hawaiian Host will pay a NSA of at least \$45,333.34 to the Settlement Class. Blakely Decl., ¶ 12; *see also* Settlement, § 4(A). According to Hawaiian Host’s records, there are approximately 38 Settlement Class members. Blakely Decl., ¶ 13. Thus, the average Individual Settlement Payment from the NSA is

1 estimated to be \$1,192.98. Blakely Decl., ¶ 13. Further, according to Hawaiian Host’s records,
2 there are approximately 7 employees who worked during the PAGA Period. *Id.* Thus, the average
3 PAGA share is estimated to be \$357.14. *Id.*

4 The Net Settlement Amount (“NSA”) shall be distributed as follows: Five percent (5%)
5 of the NSA shall be designated as the “Wage Statement Amount” and shall be distributed to each
6 participating Settlement Class member who was employed by Hawaiian Host at any time between
7 May 27, 2020 to August 17, 2022, proportionate to the number of workweeks that he or she
8 worked during the aforementioned period. *See* Settlement, § 4(B)(i). Five (5%) percent of the
9 NSA shall be designated as the “Waiting Time Amount” and shall be distributed in equal, pro-
10 rata shares to each participating Settlement Class member who separated their employment from
11 Hawaiian Host at any time after May 27, 2018. *Id.*, at § 4(B)(ii). The remainder of the NSA shall
12 be distributed to each participating Settlement Class member based on their proportionate number
13 of workweeks worked during the Class Period. *Id.*, at § 4(B)(iii). In addition to the NSA, 25% of
14 the amount set aside as PAGA penalties (i.e., \$2,500.00) has been set aside as the “PAGA
15 Amount” and shall be paid to all PAGA Aggrieved Employees⁴ (regardless of whether they opt
16 out of the Settlement Class) who worked for Hawaiian Host at any time during the PAGA Period,
17 based on their proportional number of pay periods worked for Hawaiian Host in California during
18 the PAGA Period (i.e., May 27, 2020, through August 17, 2022). *Id.*, at § 4(B)(1).

19 Settlement Class members will have 60 days from the mailing to opt-out or object, thereby
20 providing ample time to review the Settlement. Settlement, §§ 9(D)-(E). Settlement Class
21 members who do not opt out will be bound by the Settlement, and will release and discharge
22 Hawaiian Host from any and all claims that were alleged in the SAC, or which could have been
23 alleged based on the facts in the SAC. *Id.*, § 2(A). In addition, all Settlement Class members
24 (regardless whether they opt out) who worked for Hawaiian Host during the PAGA Period will
25 release all claims for PAGA civil penalties based on those alleged violations. *Id.*, § 2(B).

26 ///

27 _____
28 ⁴ “PAGA Aggrieved Employees” is defined as all current and former non-exempt employees who
worked for Hawaiian Host in California from May 27, 2020 until August 17, 2022. *See*
Settlement, § 1.

1 **2. Class Representative Enhancement Payment, Attorneys’ Fees and Costs,**
2 **and LWDA Payment**

3 Plaintiff will apply for a Class Representative Enhancement Payment at final approval in
4 the amount of \$7,500 for her services to the Settlement Class. Blakely Decl., ¶ 25; *see also*
5 Settlement, § 6. “[I]ncentive awards are fairly typical in class action cases...and are intended to
6 compensate class representatives for work done on behalf of the class [and] to make up for
7 financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination*
8 *Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the
9 requested Class Representative Enhancement Payment is intended to recognize the substantial
10 time and effort Plaintiff expended on behalf of the Settlement Class, including providing factual
11 information and documents to counsel, discussing the claims and theories at issue in the litigation,
12 and otherwise actively participating in the prosecution of her claims. Lizaola Decl., ¶¶ 4-5.
13 Plaintiff respectfully submits that this requested payment is well within the range of permissible
14 approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188
15 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 enhancement award to each of five named
16 plaintiffs from \$505,058.60 settlement).

17 At final approval, Plaintiff’s counsel will request an attorneys’ fees award of one-third of
18 the MSA, and up to \$25,000 in verified costs. Blakely Decl., ¶ 23; *see also* Settlement, § 5.
19 Plaintiff submits the requested fee is fair compensation for undertaking complex, risky,
20 expensive, and time-consuming litigation on a contingent basis. Plaintiff’s counsel has expended
21 significant time conducting pre-filing investigation; legal research; analyzing Plaintiff’s claims;
22 analyzing employee timekeeping and payroll records and other data and documents; preparing
23 for and attending mediation; negotiating the Settlement; preparing this Motion; and otherwise
24 prosecuting this case. Blakely Decl., ¶ 23. Counsel anticipates incurring additional fees in
25 appearing at the hearing on this Motion, supervising the Notice process, and preparing the Final
26 Approval motion and appearing at the Final Approval Hearing. *Id.*

27 It is appropriate to award attorneys’ fees in class actions as a percentage of the “common
28 fund” created by a settlement. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding

1 “the percentage of fund method survives in California class action cases”). Counsel’s fee request
2 of one-third of the MSA is well within the range of reasonableness, and is typical for common
3 fund settlements, and in fact was the percentage approved in *Laffitte*.

4 Additionally, the parties have agreed to designate \$10,000.00 of the MSA as PAGA civil
5 penalties, of which \$7,500.00 (75%) will be paid to the LWDA, with the remaining \$2,500.00
6 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated
7 per Labor Code § 2699(i). *See* Settlement, § 3(C)(5). Plaintiff submits this allocation to the
8 LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*
9 (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment
10 of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*
11 (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of
12 \$7,500 to LWDA out of \$1.25 million common-fund settlement).

13 **IV. ARGUMENT**

14 **A. PRELIMINARY APPROVAL IS WARRANTED**

15 Rule of Court 3.769 conditions settlement of a class action on court approval, which is
16 generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United*
17 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to
18 determine “the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler*
19 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a
20 proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred
21 means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA*
22 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court’s role in evaluating a settlement is limited
23 to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon*, 150
24 F.3d at 1027. There is an initial presumption of fairness when, as here, a settlement was negotiated
25 at arm’s length by experienced class counsel, with the assistance of an experienced mediator.
26 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

27 **1. Standard for Preliminary Approval**

28 To make a fairness determination, a court should consider several factors, including: “the

1 strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation,
2 the risk of maintaining class action status through trial, the amount offered in settlement, the
3 extent of discovery completed and the stage of the proceedings, [and] the experience and views
4 of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is
5 not exclusive and the Court is free to engage in a balancing and weighing of the factors depending
6 on the circumstances of each case." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245
7 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of
8 these factors.

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

10 Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges
11 there were substantial risks and uncertainty in proceeding with class certification and eventual
12 trial on the merits. As described in section II.B., *supra*, Hawaiian Host presented multiple
13 defenses to Plaintiff's claims, both on the merits and to class certification. While Plaintiff was
14 prepared to litigate her claims through class certification and ultimately trial, success was far from
15 certain.

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

17 Although the Parties had engaged in significant informal discovery in advance of
18 mediation, the Parties had not yet completed all formal written and deposition discovery, which
19 would have required the expenditure of substantial time and resources by all Parties. Blakely
20 Decl., ¶ 24. Even if Plaintiff obtained class certification, the Parties would incur considerable
21 attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
22 The Settlement avoids those risks and the accompanying delay and expense, and thus this factor
23 supports preliminary approval. *Id.*

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

25 Plaintiff had not yet filed her motion for class certification, and as such, the extent to
26 which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement,
27 there was a risk that there would not be a certified class at the time of trial, or if there were, it
28 would consist of a significantly smaller group of employees than the proposed Settlement Class

(either due to a narrowing of the class definition in a Court order on a contested motion for class certification, or through settlement agreements entered into by Hawaiian Host with individual class members by way of *Pick-Up-Stix* type settlement agreements⁵) and the expected recovery could be significantly reduced, given the settlement amounts that are typically offered through the *Pick-Up-Stix* process. Thus, this factor, too, supports preliminary approval of the Settlement.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a 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 Hawaiian Host in connection with mediation, Plaintiff conducted the following exposure analyses for each of Plaintiff's claims:

Unpaid Wages – Unlawful Time Rounding: \$22,019

Plaintiff alleges Hawaiian Host rounded employee timekeeping entries to quarter-hour increments in a manner that consistently favored Hawaiian Host and that, as a result, employees' wages were underpaid. Blakely Decl., ¶ 14. Based on Plaintiff's review of employee timekeeping records, Plaintiff contends that Hawaiian Host's rounding practice resulted in approximately 1,289 net hours of unpaid wages. *Id.* Thus, and based upon the average overtime rate of pay of \$26.69 during the Class Period, Plaintiff estimates that Hawaiian Host's maximum exposure for this claim is approximately \$34,403 (1,289 hrs. * \$26.69).⁶ *Id.* But as noted above, Hawaiian Host raised several defenses to this claim, including its argument that it utilized an even-handed timekeeping system that, on balance, resulted in employees being paid for all hours actually worked; that some employees were overpaid as a result its rounding practice; that employees did not perform any work before the scheduled start of their shifts; and that Plaintiff would be unable

⁵ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an employer may enter into pre-certification settlement agreements with individual putative class members in which the putative class members release claims for past unpaid wages and penalties in exchange for consideration. The Court further held that such settlements could preclude those individual employees from recovery in class action litigation against the employer for the same wage claims.

⁶ Because employees generally worked shifts of at least eight (8) hours, Plaintiff contends the underpaid wages should be paid at an overtime rate of pay. Blakely Decl., ¶ 14.

1 to certify this claim given the individualized inquiries as to whether employees were in fact
2 underpaid, or overpaid for each workday in question. *Id.* Based on these defenses, Plaintiff
3 discounted the maximum exposure by 20% to account for the risk of non-certification, and an
4 additional 20% to account for Hawaiian Host’s defenses on the merits, to arrive at an estimated
5 exposure of approximately \$22,019. *Id.*

6 Meal Period Premium Wages: \$22,225

7 Plaintiff alleges that Hawaiian Host provided non-compliant first meal periods to its non-
8 exempt employees. Blakely Decl., ¶ 15. Plaintiff further alleges that Hawaiian Host failed to
9 provide second meal periods on shifts over 10.0 hours. *Id.* Based on Plaintiff’s review and
10 extrapolation of employee timekeeping data, Plaintiff estimated approximately 761 shifts
11 reflected a non-compliant first meal period (late, short, or missed first meal period(s)). *Id.*
12 Additionally, there were approximately 1,191 non-complaint second meal periods on shifts in
13 excess of 10 hours. *Id.* Therefore, Plaintiff estimated there were a total of approximately 1,952
14 meal period violations during the Class Period. *Id.* Further, the data produced by Hawaiian Host
15 reflected an average hourly rate of approximately \$17.79 for Settlement Class members during
16 the Class Period. *Id.* Plaintiff therefore estimated a maximum total exposure for this claim at
17 approximately \$34,726 (1,952 non-compliant meal periods * \$17.79 average premium). *Id.*

18 However, Hawaiian Host contends that it maintained compliant written meal period
19 policies throughout the Class Period, and provided legally-compliant meal periods in line with
20 those policies. Blakely Decl., ¶ 15. Hawaiian Host further argues that under *Brinker*, it was only
21 required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken
22 and that any short, missed, or late meal periods were the result of lawful employee waiver or
23 choice rather than any Hawaiian Host policy or practice. *Id.* Moreover, with respect to second
24 meal periods, Hawaiian Host argues that second meal periods may lawfully be waived on shifts
25 of more than 10.0 hours but less than 12.0 hours per Labor Code § 512, and that employees did
26 so. *Id.* Hawaiian Host also argues individualized inquiries would be needed to determine why
27 each meal period was taken late or short or missed by each employee, and whether there was a
28 valid waiver, making certification of the meal period claim unlikely. *Id.* In light of these defenses,

1 Plaintiff discounted the maximum amount by 20% for risk of non-certification and an additional
2 20% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to
3 arrive at an estimated realistic exposure of approximately \$22,225. *Id.*

4 Rest Period Premium Wages: \$13,561

5 Plaintiff alleges that Hawaiian Host failed to authorize and permit a third rest periods on
6 shifts in excess of 10.0 hours. Blakely Decl., ¶ 16. As stated above, based on Plaintiff's analysis
7 of employee timekeeping records, there were approximately 1,191 shifts over 10 hours in which
8 Plaintiff alleges Hawaiian Host failed to authorize a third rest period during the Class Period. *Id.*
9 Thus, Plaintiff estimated the maximum potential exposure for this claim at approximately \$21,188
10 (1,191 rest period violations * \$17.79 average premium). *Id.*

11 But as noted above, Hawaiian Host argues that it has always maintained and enforced
12 lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 16. Hawaiian
13 Host also maintains that any failure to take rest periods was the result of employee choice, and
14 that it is not required to police rest periods. *Id.* Finally, Hawaiian Host contends that Plaintiff's
15 rest period claim is not amenable to class treatment as individualized inquiries would be required
16 to determine which employees failed to take rest periods, and the reasons why. *Id.* In light of these
17 defenses, Plaintiff discounted the maximum amount by 20% for risk of non-certification and an
18 additional 20% for risk of being unsuccessful on the merits or failure to recover the full amount
19 sought, to arrive at an estimated realistic exposure of approximately \$13,561. *Id.*

20 Unpaid Overtime – Miscalculation of Regular Rate: No Value

21 Plaintiff alleged that Hawaiian Host failed to include the value of end of the year bonuses
22 into the regular rate of pay, resulting in an underpayment of overtime wages to Settlement Class
23 members. Blakely Decl., ¶ 17. However, as stated above, Hawaiian Host contends that it properly
24 included all forms of remuneration when calculating the regular rate of pay, and that the end of
25 the year bonuses paid to Plaintiff and other Settlement Class members were discretionary holiday
26 bonuses. *Id.* As evidence that the bonuses were discretionary, Hawaiian Host pointed to examples
27 in its records where employees did not receive a bonus. *Id.* Based on this defense and the fact that
28 holiday bonuses do not need to be included in the regular rate of pay under 29 C.F.R. §

1 778.200(a)(1), Plaintiff believes that Hawaiian Host was correctly calculating the regular rate and
2 Plaintiff did not believe there was a realistic chance of recovery for this claim. *Id.*; see also 29
3 C.F.R. § 778.200(a)(1) (defining the regular rate of pay to include all remuneration for
4 employment paid to the employee while excluding “sums paid as gifts; payments in the nature of
5 gifts made at Christmas time or on other special occasions, as a reward for service, the amounts
6 of which are not measured by or dependent on hours worked, production, or efficiency.”)
7 Accordingly, Plaintiff did not assign value to this claim. Blakely Decl., ¶ 17.

8 **WARN Act Penalties: \$21,519**

9 Plaintiff contends that Hawaiian Host engaged in a mass lay off but failed to provide her
10 and other Settlement Class members with written notice of at least 60 days in advance of their
11 termination as required by the California WARN Act. Blakely Decl., ¶ 18. Based on data
12 produced by Hawaiian Host, there are approximately 7 Settlement Class members who were
13 terminated by Hawaiian Host within a 30-day period from May 2020 to June 2020 and who did
14 not sign general releases. *Id.* Accordingly, Plaintiff estimated an average California WARN Act
15 Penalty of approximately \$8,539 (\$17.79/hr * 8 hrs * 60 days), and calculated Hawaiian Host’s
16 maximum WARN Act exposure at approximately \$59,773 (7 former employees * \$8,539 WARN
17 Act penalty). *Id.* However, Hawaiian Host argues it is not liable for any WARN Act violation
18 because it did not lay off the minimum number of employees within a 30-day window required
19 in order to trigger the WARN Act. *Id.* Additionally, Hawaiian Host argues that the mass lay-off
20 was caused by COVID-19 and, under Executive Order N-31-20, it was only required to give as
21 much notice as is “practicable”, which, according to Hawaiian Host, it did. *Id.* Lastly, Hawaiian
22 Host argues that even if it were to be found liable for violations of the WARN Act, Plaintiff cannot
23 meet the numerosity requirement under Cal. Civ. Proc. § 382, as Hawaiian Host alleges that all
24 but 7 employees who were terminated between May 2020 and June 2020 signed general releases.
25 *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 40% for risk of non-
26 certification, and by an additional 40% for risks on the merits, for an estimated realistic exposure
27 of approximately \$21,519.

28 **Wage Statement Penalties: \$3,600**

1 Plaintiff's analysis reflected that there were approximately 150 pay periods worked by
2 Settlement Class members, and 7 unique employees, within the one-year liability window under
3 Labor Code § 226. Blakely Decl., ¶ 19. In calculating Hawaiian Host's exposure, Plaintiff
4 assumed she could recover the "initial" \$50 penalty under Section 226(e) for each violation, for
5 a total of \$7,500 (150 pay periods * \$50 "initial" penalty) in potential penalties. *Id.*; *see also*
6 *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate
7 applies until employer is notified it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58
8 F.Supp.3d 1032, 1042-43 (N.D. Cal. 2014) (citing *Amaral* and applying "initial" \$50 penalty to
9 all pay periods in calculating amount-in-controversy for wage statement claim). However, given
10 Hawaiian Host's arguments that no violations occurred, that Settlement Class members suffered
11 no "injury," that any violations were not "knowing and intentional," as well as risks associated
12 with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure
13 by 20% for risk of non-certification, and by an additional 40% for risks on the merits, for an
14 estimated realistic exposure of approximately \$3,600. Blakely Decl., ¶ 19.

15 Waiting Time Penalties: \$64,548

16 Based on data produced by Hawaiian Host, there are approximately 27 Settlement Class
17 members who separated their employment from Hawaiian Host at any time from May 27, 2018,
18 through August 17, 2022, and are therefore eligible for waiting time penalties. Blakely Decl., ¶
19 20. Plaintiff estimated an average waiting time penalty of approximately \$4,269 (\$17.79/hr * 8
20 hrs * 30 days), and calculated Hawaiian Host's maximum waiting time penalty exposure at
21 approximately \$115,263 (27 former employees * \$4,269 average waiting time penalty). *Id.*
22 However, Hawaiian Host asserts it has strong, good-faith defenses to Plaintiff's underlying claims
23 and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able
24 to recover waiting time penalties. *Id.* Moreover, Plaintiff would need to overcome Hawaiian
25 Host's defenses, both as to class certification and as to the merits, to her underlying claims. *Id.*
26 Based on these defenses, Plaintiff discounted Hawaiian Host's maximum exposure by 20% for
27 risk of non-certification and by an additional 30% for risk of being unsuccessful on the merits or
28 failure to recover the full amount sought, to arrive at an estimated total of approximately \$64,548.

1 *Id.*

2 PAGA Civil Penalties: \$10,200

3 Plaintiff estimated a maximum PAGA exposure of \$15,000 (150 pay periods during
4 PAGA Period * 100 “initial” violation rate). Blakely Decl., ¶ 21; *Amaral*, 163 Cal.App.4th at
5 1209 (finding “initial” violation rate applies until employer is notified that it is violating a Labor
6 Code provision). However, these penalties derive from Plaintiff’s underlying claims, each of
7 which Hawaiian Host vigorously disputes. Blakely Decl., ¶21. The PAGA also grants trial courts
8 discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Hawaiian Host argued
9 the Court would reduce penalties significantly given its good-faith defenses. Blakely Decl., ¶ 21.
10 Thus, Plaintiff discounted the maximum figure by 15% for risk of losing on the merits and/or not
11 recovering a PAGA penalty for each and every pay period, and by an additional 20% for risk of
12 the Court reducing penalties, for an estimated exposure of approximately \$10,200. *Id.*; *see also*
13 *Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30
14 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

15 Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class
16 would be approximately \$157,672. Blakely Decl., ¶ 22. Thus, the proposed \$140,000.00
17 settlement represents approximately 88.8% of the reasonably forecasted recovery. *Id.* Preliminary
18 approval is appropriate since the Settlement will provide significant monetary relief to the
19 Settlement Class, which is consistent with what Plaintiff’s counsel believes could have been
20 recovered had the case proceeded through trial.

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

22 “Parties represented by competent counsel are better positioned than courts to produce a
23 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*
24 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent counsel with
25 extensive experience litigating wage and hour class actions from both the plaintiff and defense
26 side and have been appointed class counsel in numerous cases with similar claims. Blakely Decl.,
27 ¶¶ 2-5; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-8; Declaration of Alexandra R.
28 McIntosh (“McIntosh Decl.”), ¶¶ 3-5.

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 approximately 88.8% of the estimated recovery the Settlement
8 Class could realistically expect in light of the significant litigation risks, and will provide tangible,
9 monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability
10 exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g.,*
11 *Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007)
12 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th
13 Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
14 recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527
15 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to
16 only a fraction of the potential recovery that might be available to the Settlement Class members
17 at trial”). Plaintiff submits the Settlement is within the range of possible approval, such that notice
18 should be provided to the Settlement Class. The Court will have the opportunity to again assess
19 the reasonableness of the Settlement after the Settlement Class members have had the opportunity
20 to opt-out or object.

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

22 The Settlement is a result of extensive informal discovery and a full-day mediation. Thus,
23 it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted
24 the claims at issue, and conducted detailed data analyses to arrive at estimated potential damages.
25 Blakely Decl., ¶¶ 14-22. The Parties then worked collaboratively in the following months to
26 finalize the Settlement. *Id.*, ¶ 11. This factor thus supports preliminary approval.

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

28 The Settlement contains no obvious deficiencies. The Settlement will provide tangible

monetary relief to Settlement Class members. The amounts proposed for attorneys’ fees, costs, settlement administration costs, LWDA payment, and enhancement payment are all reasonable. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

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

1. The Proposed Class Is Ascertainable and Numerous

A class is “ascertainable” where members “may be readily identified without unreasonable expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th 905, 919 (2010). Here, the Settlement Class includes all current and former non-exempt employees who worked for Hawaiian Host in California during the Class Period and who did not sign a “Separation Agreement and General Release”. The Settlement Class can therefore be identified from Hawaiian Host’s personnel and employment records. Hawaiian Host represents that there are approximately 38 Settlement Class members, making it impracticable to bring them all before the Court. Blakely Decl., ¶ 13. 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). Plaintiff’s claims are predicated primarily on Hawaiian Host’s alleged failure to provide meal and rest periods. 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 Plaintiff 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). Plaintiff’s claims are typical of the Settlement Class. Plaintiff worked in California for Hawaiian Host during the Class Period as a non-exempt employee, was subject to Hawaiian Host’s wage and hour

1 policies, and was injured in the same manner as Settlement Class members. See Lizaola Decl., ¶¶
2 2-3. Typicality is thus satisfied.

3 **4. Plaintiff and Her Counsel Will Adequately Represent the Class**

4 The adequacy inquiry examines conflicts of interest between a named plaintiff and the
5 class she seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th
6 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement Class as there
7 are no known conflicts between Plaintiff and Settlement Class members, and Plaintiff’s counsel
8 has extensive relevant experience. See Blakely Decl., ¶¶ 2-5, 26.

9 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE**

10 This Court should order distribution of the Notice in English and Spanish by U.S. Mail,
11 using last known mailing addresses provided by Hawaiian Host. See Settlement, § 9. This is the
12 “best notice practicable” under the circumstances because it provides “individual notice to all
13 members who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417
14 U.S. 156, 173 (1974). Plaintiff proposes the settlement be administered by Phoenix Settlement
15 Administrators (“Phoenix”), an experienced settlement administrator. See Declaration of Jodey
16 Lawrence and exhibits. Settlement Class members’ addresses will be ascertainable through
17 Hawaiian Host’s records, which Hawaiian Host will provide to Phoenix within fifteen (15)
18 business days after entry of an order preliminarily approving this Settlement. See Settlement, §
19 9(A). Within ten (10) business days of receipt of the Settlement Class members’ addresses,
20 Phoenix will run the addresses through the National Change of Address (“NCOA”) database
21 (which provides updated addresses for any individual who has moved in the previous four years
22 and has notified the U.S. Postal Service of a forwarding address) and mail the Class Notice to all
23 Settlement Class members. See Settlement, § 9(B). To the extent that any notices are returned,
24 Phoenix will perform a “skip trace” to track any Settlement Class member’s current mailing
25 address. *Id.*, at § 9(C).

26 The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
27 Class members of the basic contentions and denials of the parties, the key terms of the Settlement,
28 the 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by

1 the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A & B to Exh. 1. The Notice also
2 notifies Settlement Class members of the final fairness hearing and provides Class Counsel's
3 contact information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective
4 method of reaching Settlement Class members.

5 **V. CONCLUSION**

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

9
10 Dated: November 30, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

11 By:



12 Sean M. Blakely
13 Attorneys for Plaintiff
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