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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

JONATHAN W. ADAMS, as an individual and
on behalf of all others similarly situated,
Plaintiff,

vs.

HACIENDA POST ACUTE, INC., a California
corporation; and DOES 1 through 100,
Defendants.

Case No.: 21C-0143

*[Assigned for all purposes to the Hon.
Randy Edwards in Dept. 2]*

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

Date: January 29, 2024
Time: 8:15 a.m.
Dept.: 2

Complaint Filed: May 12, 2021
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 29, 2024, at 8:15 a.m. in Department 2 of the above-entitled Court, located at 1640 Kings County Drive, Hanford, California 93230, Plaintiff Jonathan W. Adams (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:
All non-exempt hourly employees who were employed by Defendant Hacienda Post Acute, Inc. (“Hacienda Post Acute”) in California from November 15, 2016 through April 30, 2022 (“Class Period”).
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 permit a Class Representative Service Award to Plaintiff, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Sean M. Blakely, Paul K. Haines, Alexandra R. McIntosh, Plaintiff Jonathan W. Adams, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

Respectfully submitted,

Dated: December 1, 2023

HAINES LAW GROUP, APC

By:

Sen Blahf

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jonathan W. Adams (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of non-exempt hourly employees of
5 Defendant Hacienda Post Acute, Inc. (hereinafter “Hacienda Post Acute”) who worked for
6 Hacienda Post Acute in California between November 15, 2016 through April 30, 2022 (“Class
7 Period”). Plaintiff’s primary allegations are that Hacienda Post Acute failed to provide all legally
8 compliant meal and rest periods, failed to pay all overtime and minimum wages, and failed to
9 reimburse for all necessary business expenses. As a result of these alleged violations, Plaintiff
10 also brought derivative claims for Hacienda Post Acute’s alleged failure to pay all final wages
11 owed, failure to issue accurate and compliant wage statements, and for civil penalties under the
12 Private Attorneys’ General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Hacienda Post Acute has agreed to
15 pay Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) to the following Settlement
16 Class:

17 All non-exempt hourly employees who were employed by Defendant
18 Hacienda Post Acute, Inc. (“Hacienda Post Acute”) in California from
November 15, 2016 through April 30, 2022 (“Class Period”).

19 If the Settlement is approved, Hacienda Post Acute will pay a non-reversionary Maximum
20 Settlement Amount of \$500,000.00. After deducting administration costs, Plaintiff’s requested
21 Class Representative Service Award, payment to the Labor and Workforce Development Agency
22

23 ¹ The operative First Amended Class and Representative Action Complaint (“FAC”) pleads the
24 following causes of action: (1) failure to pay all overtime wages; (2) minimum wage violations;
25 (3) failure to pay reporting time pay; (4) rest period violations; (5) meal period violations; (6)
26 failure to reimburse all necessary business expenses; (7) wage statement violations; (8) waiting
time penalties; (9) unfair competition; and (10) civil penalties under the PAGA.

27 ² The Class and Representative Action Settlement Agreement (“Settlement”) is attached to the
28 Declaration of Sean M. Blakely as **Exhibit A**. The proposed Class Notice is attached to the
Settlement as **Exhibit 1**. All defined terms in this motion have the same definition as that in the
Settlement.

1 (“LWDA”) for its share of PAGA civil penalties, and requested attorneys’ fees and costs, the Net
2 Settlement Amount (“NSA”) of approximately \$265,833.34 will be distributed to all Class
3 Members who do not opt out of the Settlement based on the proportionate number of workweeks
4 worked by each Class Member during the Class Period.

5 Significantly, Class Members do not need to file a claim to reap the financial benefits of
6 the Settlement, as all Class Members will automatically receive a payment unless they
7 affirmatively opt-out. There are approximately 503 Class Members, and the average payment to
8 participating Class Members is projected to be approximately \$528.50. This is a favorable result
9 for Class Members, who will be releasing only those claims alleged in the Action.

10 The proposed Settlement is within the range of possible approval in light of the significant
11 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, Hacienda
12 Post Acute’s financial situation, and the tangible monetary benefits to be received by Plaintiff and
13 the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that this
14 Court grant preliminary approval of the Settlement.

15 **II. SUMMARY OF THE LITIGATION**

16 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

17 Founded in 1965, Hacienda Post Acute was a rehabilitation and senior nursing home,
18 providing skilled nursing and long-term care. *See* Declaration of Sean M. Blakely (“Blakely
19 Decl.”), ¶ 8. On or about May 1, 2022, Hacienda Post Acute was acquired by another entity and
20 ceased operating. *Id.* Plaintiff worked for Hacienda Post Acute as non-exempt employee in the
21 positions of “Maintenance” and “Central Supply” from approximately March 2020 until
22 approximately September 2020. *See* Declaration of Jonathan W. Adams In Support of Approval
23 of Class Action Settlement (“Adams Decl.”), ¶ 2.

24 On May 12, 2021, Plaintiff filed his Class Action Complaint in Kings County Superior
25 Court, alleging that Hacienda Post Acute failed to: (i) pay all overtime wages; (ii) pay all
26 minimum wages; (iii) pay reporting time pay; (iv) authorize and permit all required rest periods;
27 (v) provide all required meal periods; (vi) reimburse all necessary business expenses; (vii) provide
28 accurate itemized wage statements; (viii) pay all wages at the end of employment; and (ix)

engaged in unfair competition in violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On May 12, 2021, Plaintiff sent his PAGA notice letter to the LWDA. *Id.*; **Exhibit B**. Subsequently, on July 19, 2021, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* Blakely Decl., ¶ 9.

B. PLAINTIFF’S CLAIMS AND HACIENDA POST ACUTE’S DEFENSES

1. Rest Period Claims

Plaintiff alleges that Hacienda Post Acute failed to authorize and permit compliant off-duty rest periods as Hacienda Post Acute required employees to remain on premises during their off-duty rest periods. Blakely Decl., ¶ 14. *See Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 260, 273 (2016) (“During required rest periods, employers must relieve their employees of all work duties and relinquish any control over how employees spend their break time . . .”). Furthermore, Plaintiff alleges that Hacienda Post Acute did not provide third rest periods to employees who worked a shift of more than 10.0 hours. Blakely Decl., ¶ 14.

Hacienda Post Acute counters that it has maintained compliant written rest period policies throughout the Class Period, and that there was no written policy requiring employees to remain on premises during their rest breaks. Blakely Decl., ¶ 14. Hacienda Post Acute further contends that, even if it (or individual managers) had required employees to remain on premises, *Augustus* rejected Plaintiff’s “on premises” theory when it observed that “one would expect that employees will ordinarily have to remain onsite or nearby. *Id.* This constraint, which is of course common to all rest periods, is not sufficient to establish employer control.” *Id.*; *see Augustus, supra*, 2 Cal.5th at 270. Hacienda Post Acute also contends that throughout the Class Period it 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 a result of employee choice, rather than any Hacienda Post Acute policy and/or practice. Blakely Decl., ¶ 14. Hacienda Post Acute also argues that Plaintiff’s rest period claim is not amenable to class treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons

1 why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability
2 concerns are especially present with respect to rest period claims, Hacienda Post Acute argues,
3 given that rest periods are not recorded. *Id.*

4 **2. Regular Rate Claims**

5 Plaintiff alleges that Hacienda Post Acute failed to pay all overtime wages owed by not
6 including the value of all non-discretionary remuneration into the regular rate of pay. Blakely
7 Decl., ¶ 15. Specifically, Plaintiff alleges that following the COVID-19 outbreak, Hacienda Post
8 Acute began paying employees a non-discretionary bonus for showing up for their scheduled
9 shift. *Id.* However, Plaintiff contends Hacienda Post Acute failed to include the value of all
10 remuneration, including this bonus, into the regular rate of pay for purposes of calculating
11 overtime, and as a result, underpaid overtime wages. *Id.*

12 Hacienda Post Acute contends that it properly included all forms of remuneration when
13 calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members.
14 Blakely Decl., ¶ 15. Hacienda Post Acute further argues that Class Members received different
15 types of bonuses throughout the Class Period, creating substantive differences among the Class
16 Members with respect to the incentives received, making class certification unlikely. *Id.*

17 **3. Meal Period Claims**

18 Plaintiff alleges that Hacienda Post Acute failed to provide timely, duty-free, and
19 uninterrupted 30-minute meal periods commencing before the end of the fifth hour of work.
20 Blakely Decl., ¶ 16.

21 Hacienda Post Acute counters that it maintained compliant written meal period policies
22 throughout the Class Period and provided compliant meal periods in line with those policies.
23 Blakely Decl., ¶ 16. Hacienda Post Acute further contends that it always *provides* employees the
24 opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker*
25 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus,
26 Hacienda Post Acute argues that any non-compliant meal periods resulted from lawful employee
27 waiver or choice, rather than any policy and/or practice of Hacienda Post Acute. Blakely Decl., ¶
28 16. Finally, Hacienda Post Acute maintains Plaintiff’s meal period claim is not suited for class

1 certification since individual inquiries would be needed to assess which employees if any, took
2 non-compliant or missed meal periods, how many meal periods were non-compliant or missed,
3 and the reasons why a particular employee did not take a meal period on a particular shift. *Id.*

4 **4. Unpaid Wages Due to Rounding**

5 Plaintiff contends that Hacienda Post Acute underpaid Class Members due to its allegedly
6 unlawful rounding policies/practices. Blakely Decl., ¶ 17. Plaintiff alleges that although Hacienda
7 Post Acute’s timekeeping system recorded hours worked to the minute, Hacienda Post Acute
8 rounded all time-punches to the nearest quarter-hour, resulting in an underpayment of wages to
9 Class Members. *Id.*

10 However, Hacienda Post Acute argues that its rounding policies/practices were lawful,
11 since it was both neutral on its face and resulted, over time, in employees being paid for all hours
12 worked. Blakely Decl., ¶ 17. Hacienda Post Acute also contends that multiple Courts of Appeal
13 have found rounding mechanisms to be lawful under similar circumstances. *See, e.g., Ferra v.*
14 *Loews Hollywood Hotel, LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other
15 grounds) (affirming summary judgment for employer on rounding claim where employees were
16 underpaid on 54.6% of shifts, finding that such facts do not establish that employees were
17 “systematically undercompensate[d]”); *AHMC Healthcare, Inc. v. Superior Court*, 24
18 Cal.App.5th 1014, 1028 (2018) (affirming summary judgment for employer where “bare
19 majority” of employees were underpaid due to rounding). Additionally, Hacienda Post Acute
20 asserts Plaintiff would be unable to certify a rounding class given the individualized inquiries as
21 to whether Class Members were in fact underpaid, or potentially overpaid, for each workday in
22 question. Blakely Decl., ¶ 17.

23 **5. Failure to Reimburse for Necessary Business Expenditures**

24 Plaintiff contends that Hacienda Post Acute required Class Members to use their personal
25 cellphones for a variety of work activities, including but not limited to, communicating with
26 supervisors, but were not reimbursed for these business expenses. Blakely Decl., ¶ 18; *see also*
27 Labor Code § 2802; *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014)
28 (“Thus to be in compliance with section 2802, the employer must pay some reasonable percentage

1 of the employee’s cell phone bill.”).

2 Hacienda Post Acute maintains that Class Members were not required to use their personal
3 cellular phones as part of their job. Blakely Decl., ¶ 18. Hacienda Post Acute further argues that
4 any expenses incurred by Class Members were minimal, given the wide availability of low-cost
5 cellular phone plans. *Id.* Lastly, Hacienda Post Acute argues this claim is not suitable for class
6 treatment, as it would require individualized determinations as to whether each Class Member
7 used a personal cellular phone for work-related purposes, and if so, how much of that use was a
8 reasonable percentage of their individual monthly phone bill. *Id.*

9 **6. Waiting Time Penalties**

10 As a result of the unpaid wages and unpaid meal and rest period premium wages described
11 above, Plaintiff alleges that Hacienda Post Acute failed to comply with its final pay obligations
12 set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 19. However, Hacienda Post Acute argues
13 that it possesses strong, good faith defenses to Plaintiff’s underlying claims, thus precluding
14 recovery of waiting time penalties, which are only available for the “willful” failure to pay wages.
15 *Id.*; see also 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will
16 preclude imposition of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that
17 any wages are due occurs when an employer presents a defense, based in law or fact which, if
18 successful, would preclude any recovery on the part of the employee.”). Hacienda Post Acute
19 further asserts that Plaintiff’s waiting time penalty exposure was grossly inflated as not every
20 former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 19.

21 **7. Wage Statement Claims**

22 As a further result of the unpaid wages and unpaid meal and rest period premium wages
23 described above, Plaintiff alleges that Hacienda Post Acute is liable for wage statement penalties.
24 Blakely Decl., ¶ 20. Hacienda Post Acute argues any alleged wage statement violations were not
25 “knowing and intentional,” and Plaintiff cannot show he or other employees “suffer[ed] injury”
26 due to the alleged wage statement violations, as required by Labor Code § 226(e) for the
27 imposition of penalties. *Id.* Further, Hacienda Post Acute contends its wage statements always
28 accurately reflected hours worked and amounts paid as well as all other required information,

precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received...The purpose of section 226 is to *document the paid wages* to ensure the employee is fully informed regarding the calculation of those wages.”) (Italics in original). Blakely Decl., ¶ 20.

8. PAGA Civil Penalties

As a result of the foregoing Labor Code violations, Plaintiff alleges that Hacienda Post Acute is liable for civil penalties under the PAGA. Blakely Decl., ¶ 21. Since Plaintiff’s PAGA claim is derivative of Plaintiff’s underlying wage claims, Hacienda Post Acute asserts the PAGA claim would fail with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Hacienda Post Acute further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Hacienda Post Acute liable for any of Plaintiff’s claims. Blakely Decl., ¶ 21; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, the Parties engaged in extensive informal discovery. Blakely Decl., ¶ 10. Hacienda Post Acute produced a 12% sampling of timekeeping and payroll records for non-exempt employees during the Class Period, as well as its relevant written wage and hour policies/procedures, employee handbook, and other information. *Id.* Hacienda Post Acute also provided relevant data points such as the total number of aggregate workweeks in the Class Period and the total number of Class Members employed by Hacienda Post Acute in

1 California during the Class Period. *Id.* Plaintiff hired a labor economist with a Ph.D. in economics
2 to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the payroll and
3 timekeeping data produced by Hacienda Post Acute to create a detailed exposure analysis for all
4 claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's
5 claims, the chances of certification of Plaintiff's claims, and Hacienda Post Acute's potential
6 defenses. *Id.*

7 On September 8, 2022, the Parties participated in a full-day mediation with Todd A.
8 Smith, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During
9 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
10 certification of Plaintiff's claims, the legal basis for the claims and defenses, and Hacienda Post
11 Acute's financial condition. *Id.* The Parties did not reach a settlement at mediation and Hacienda
12 Post Acute agreed to turn over its financial records to Plaintiff's retained forensic accountant to
13 evaluate its financial condition. *Id.* These documents included records showing that Hacienda
14 Post Acute was acquired on or about May 1, 2022, and ceased operating as of that date.³ *Id.* The
15 Parties thereafter resumed their settlement negotiations with Mr. Smith, who ultimately issued a
16 mediator's proposal for a class-wide settlement, which was accepted by all Parties. *Id.* During the
17 months that followed, the Parties finalized the terms of the Settlement and executed the long-form
18 Settlement Agreement now before the court. *Id.*

19 **III. THE PROPOSED SETTLEMENT**

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

21 If the Court preliminarily approves the Settlement, Hacienda Post Acute will pay a
22 Maximum Settlement Amount of \$500,000.00. *See* Settlement, §§ 10, 40(a). Significantly, this
23

24 ³ Following Hacienda Post Acute's representation of its financial position, the company turned
25 over its financial records to Plaintiff's retained expert, Keith D. Messerschmidt, who is a forensic
26 accountant and has consulted or provided expert testimony in dozens of litigation and insurance
27 matters. Blakely Decl., ¶ 11. Mr. Messerschmidt opined that Hacienda Post Acute could not
28 reasonably afford to pay more than the Maximum Settlement Amount. *Id.* Should the Court wish
to review a declaration from Mr. Messerschmidt attesting to these facts and Hacienda Post
Acute's financial condition, this declaration could either be filed *in camera* or filed under seal, at
the Court's request. *Id.*

Settlement is non-reversionary, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. *Id.*, at §§ 39, 55. Each Class Member will automatically receive an Individual Settlement Payment unless they affirmatively opt out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Maximum Settlement Amount:	\$500,000.00
• Minus Court-approved attorneys' fees:	\$166,666.66
• Minus Court-approved verified costs (up to):	\$30,000.00
• Minus Court-approved Service Award:	\$7,500.00
• Minus payment to the LWDA:	\$15,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$15,000.00</u>
Net Settlement Amount ("NSA"):	\$265,833.34

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Award to Plaintiff, the payment to the LWDA for its share of PAGA civil penalties, and settlement administration costs, the Settlement requires Hacienda Post Acute to pay an NSA of at least \$265,833.34 to all Class Members who do not timely opt-out. *See* Settlement, § 11. The NSA shall be distributed to each participating Class Member based on their proportionate number of workweeks worked during the Class Period. *Id.*, at § 61(b), (c). Additionally, Five Thousand Dollars (\$5,000.00) of the Maximum Settlement Amount shall be distributed to the PAGA Group Members (including those who submit a valid and timely Request for Exclusion from the class action settlement) who were employed during the PAGA Period (i.e., May 12, 2020 through April 30, 2022) proportionally based on the number of workweeks worked during that time period. *Id.*, at § 61(a), (c).

According to Hacienda Post Acute, there are approximately 503 Class Members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment from the NSA is projected to be approximately \$528.50. *Id.* There are approximately 239 PAGA Group Members during the PAGA Period. *Id.* Therefore, each Aggrieved Employee will receive an average of approximately \$20.92 from the \$5,000.00 PAGA Amount. *Id.* Settlement Class members will have forty-five (45) calendar days from the mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement.

1 *See* Settlement, §§ 12, 55(a), 56. Those Settlement Class members who do not opt-out of the
2 Settlement will be bound by its terms and will release all claims against Hacienda Post Acute
3 included within the Settlement. *See Id.*, at §§ 22, 23, 68.

4 **2. Attorneys' Fees and Costs, Service Award, and PAGA Payment**

5 Plaintiff will apply for Class Representative Service Award at the time of seeking final
6 approval of the proposed class action settlement in the amount of \$7,500.00 for his service to the
7 Settlement Class. *See* Settlement, § 43. “[I]ncentive awards are fairly typical in class action cases
8 . . . and are intended to compensate class representatives for work done on behalf of the class
9 [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re*
10 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
11 briefed at the time of final approval, Plaintiff’s requested Service Award is intended to recognize
12 the time and effort Plaintiff expended on behalf of the Settlement Class, including providing
13 substantial factual information and documents to Class Counsel, discussing the claims and
14 theories at issue in the litigation, actively participating in the prosecution of his claims, as well as
15 the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case.
16 *See* Adams Decl., ¶¶ 4-6.

17 Class Counsel will also apply for an attorneys’ fees award of one-third of the Maximum
18 Settlement Amount, which is currently estimated to be \$166,666.66, and up to \$30,000.00 in
19 verified costs reimbursement. *See* Settlement, § 42; Blakely Decl., ¶ 23. Plaintiff submits the
20 requested fee is fair compensation for undertaking complex, risky, expensive, and time-
21 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial
22 attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal
23 research, conducting extensive informal discovery, analyzing Settlement Class members’
24 timekeeping and payroll records with the help of a retained expert, creating a comprehensive
25 damages model, preparing for and attending mediation, analyzing Hacienda Post Acute’s
26 financial records with the help of another retained expert, negotiating and preparing the long-form
27 Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel
28 expects to expend additional attorney time in attending the hearing on this Motion, overseeing the

1 Notice process and fielding questions from Settlement Class members, preparing the final
2 approval papers, and attending the Final Approval hearing. *Id.*

3 California courts recognize that an appropriate method for awarding attorneys' fees in
4 class actions is to award a percentage of the "common fund" created as a result of a settlement.
5 *See, e.g., Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of
6 fund method survives in California class action cases"). Class Counsel's request for fees of one-
7 third of the Maximum Settlement Amount is well within the range of reasonableness and indeed
8 is considered the typical rate for common fund settlements. Historically, courts have awarded
9 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See*
10 *Newberg on Class Actions* § 14.6 (4th Ed. 2013).

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

16 Additionally, the parties have agreed to designate \$20,000.00 of the Maximum Settlement
17 Amount as PAGA civil penalties, of which \$15,000.00 (75%) will be paid to the LWDA, with
18 the remaining \$5,000.00 (25%) for distribution to the PAGA Group Members, as the PAGA
19 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, §§ 44, 61(a).
20 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
21 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
22 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
23 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
24 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
25 settlement).

26 **IV. ARGUMENT**

27 **A. PRELIMINARY APPROVAL IS WARRANTED**

28 California Rule of Court 3.769 conditions settlement of a class action on court approval,

1 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
2 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
3 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
4 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
5 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
6 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
7 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
8 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
9 agreement taken as a whole is fair. *See e.g., Hanlon*, *supra*, 150 F.3d at 1027. There is an initial
10 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
11 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
12 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

13 **1. Standard for Preliminary Approval**

14 To make a fairness determination, the Court should consider several factors, including:
15 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
16 litigation, the risk of maintaining class action status through trial, the amount offered in
17 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
18 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
19 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
20 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
21 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
22 reasonable in light of the overall balance of factors in this case.

23 **a. The Strength of Plaintiff’s Case**

24 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
25 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
26 described above in section II.B., *supra*, Hacienda Post Acute presented multiple defenses to
27 Plaintiff’s claims, both on the merits and with respect to class certification. Thus, while Plaintiff
28 was prepared to litigate these claims through class certification and ultimately trial, success was

1 far from certain.

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

3 Although the Parties engaged in significant informal discovery prior to mediation, the
4 Parties still had significant formal discovery to complete had the matter not been settled. Blakely
5 Decl., ¶ 24. This would have required the expenditure of substantial time and resources by both
6 Parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the
7 classes, the Parties would incur considerably more attorneys' fees and costs through a possible
8 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
9 accompanying expense. *Id.*

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

11 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
12 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
13 was a risk that there would not be a certified class at the time of trial, or if there were, it would
14 consist of a significantly smaller group of employees than the proposed Settlement Class (either
15 due to a narrowing of the class definition in a Court order on a contested motion for class
16 certification, or through settlement agreements entered into by Hacienda Post Acute with
17 individual class members by way of *Pick-up-Stix* type settlement agreements ⁴), and the expected
18 recovery could be significantly reduced, given the settlement amounts that are typically offered
19 through the *Pick-up-Stix* process. Thus, this factor, too, supports preliminary approval of the
20 settlement.

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

22 The Settlement provides a positive recovery for the Settlement Class in the face of
23 disputed claims. Plaintiff, with the help of his retained expert, conducted a detailed analysis of
24

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

1 alleged meal and rest period premium payments owing, wage statement penalties, waiting time
2 penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are
3 discussed below:

4 **Rest Period Violation: \$221,968**

5 Plaintiff alleges that Hacienda Post Acute failed to authorize and permit compliant off-
6 duty rest periods as it required employees to stay on premises during their rest periods. Blakely
7 Decl., ¶ 14. Based on Plaintiff's expert's analysis and extrapolation of employee timekeeping
8 records, there were approximately 177,859 shifts in excess of 3.5 hours, entitling employees to at
9 least one rest period. *Id.* Thus, Plaintiff calculated the maximum potential exposure for this claim
10 at approximately \$2,959,573 (177,859 rest period violations * \$16.64 average premium). *Id.*

11 However, as discussed above, Hacienda Post Acute argues that it always maintained
12 lawful written rest period policies during the Class Period, and that these policies did not restrict
13 employees to the premises during their rest periods. Blakely Decl., ¶ 14. Hacienda Post Acute
14 also maintains that any failure to take rest periods was the result of employee waiver or choice,
15 and that it is not required to police rest periods. *Id.* Hacienda Post Acute further argues that
16 Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries would
17 be required to determine which employees failed to take rest periods, and the reasons why each
18 employee failed to take a rest period on a particular shift. *Id.* These considerations are particularly
19 present with respect to rest periods, Hacienda Post Acute argues, as rest periods are not – and
20 need not be – recorded. *Id.* In light of these defenses, Plaintiff discounted the maximum amount
21 that the class could potentially recover by 70% for risk of non-certification and discounted an
22 additional 75% for risk of being unsuccessful on the merits or failure to recover the full amount
23 sought, to arrive at a projected exposure of approximately \$221,968. *Id.*

24 **Regular Rate Claims: \$7,200**

25 Plaintiff alleges that Hacienda Post Acute failed to pay all overtime wages owed by not
26 including the value of all non-discretionary remuneration into the regular rate of pay. Blakely
27 Decl., ¶ 15. Based on Plaintiff's review of payroll records, overtimes wages owed to employees
28 due to the failure to calculate COVID-19 pay into the regular rate is approximately \$12,000. *Id.*

1 However, as stated above, Hacienda Post Acute contends that it properly included all
2 forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime
3 wages to Class Members. Blakely Decl., ¶ 15. Hacienda Post Acute further argues that Class
4 Members received different types of bonuses throughout the Class Period, creating substantive
5 differences among the Class Members with respect to the incentives received, making class
6 certification unlikely. *Id.* In light of these defenses, Plaintiff discounted the maximum amount
7 that the class could potentially recover by 20% for risk of non-certification and discounted an
8 additional 25% for risk of being unsuccessful on the merits or failure to recover the full amount
9 sought, to arrive at an estimated total of approximately \$7,200. *Id.*

10 Meal Period Violations: \$44,672

11 Plaintiff alleges that Hacienda Post Acute failed to provide timely 30-minute meal periods
12 before the conclusion of the fifth hour of work. Blakely Decl., ¶ 16. Based on Plaintiff's expert's
13 analysis and extrapolation of the timekeeping data produced by Hacienda Post Acute, there were
14 approximately 25,568 shifts during the Class Period with a non-compliant first meal period. *Id.*
15 Further, based on data provided by Hacienda Post Acute, Class Members' average hourly rate of
16 pay during the Class Period was approximately \$16.64 per hour. *Id.* Therefore, Plaintiff calculated
17 Hacienda Post Acute's maximum exposure on this claim at approximately \$425,451 (25,568 non-
18 compliant first meal periods * \$16.64 average meal period premium). *Id.*

19 However, as noted above, Hacienda Post Acute contends that it provided compliant meal
20 periods to Class Members throughout the Class Period, and that this is reflected in its timekeeping
21 records, which show compliant first meal periods provided on approximately 85% of all meal
22 period eligible shifts. Blakely Decl., ¶ 16. Hacienda Post Acute also asserts that under *Brinker* it
23 is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are
24 taken, and that, as described above, it has always done so, and any non-complaint first meal
25 periods in the timekeeping records were the result of lawful employee waiver or choice. *Id.*
26 Hacienda Post Acute also maintains that Plaintiff's meal period claim is not suited for class
27 certification, since individual inquiries would be needed to assess which employees took non-
28 compliant meal periods or missed meal periods, how many meal periods were non-compliant or

missed, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these defenses and arguments, Plaintiff discounted Hacienda Post Acute's maximum exposure by 65% for the risk of non-certification, and an additional 70% to account for Hacienda Post Acute's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately \$44,672. *Id.*

Unpaid Wages Due to Rounding: \$15,719

Plaintiff alleges that Hacienda Post Acute underpaid employees through a process of unlawful rounding. Blakely Decl., ¶ 17. Based on Plaintiff's review of employee timekeeping records, when looking at all shifts in the timekeeping data, there was an average *overpayment* of 2.59 minutes per shift. *Id.* When looking only at shifts where there was an underpayment, Plaintiff's analysis revealed that Class Members were underpaid approximately 2,952 total hours during the Class Period. *Id.* Therefore, Plaintiff calculated the maximum exposure for this claim at approximately \$98,243 (2,952 hours * \$16.64 hourly rate * 2 (liquidated damages)). *Id.*

As stated above, Hacienda Post Acute argued that its timekeeping policies were neutral and resulted in Class Members being compensated for all hours actually worked. Blakely Decl., ¶ 17. This was borne out by the timekeeping data, which showed that approximately 27.3% of all shifts reflected an underpayment, approximately 63.3% of all shifts reflected an overpayment, and approximately 9.4% of all shifts were neutral. *Id.* Hacienda Post Acute argued that Plaintiff would be unable to certify this claim given the individualized inquiries as to whether employees were in fact underpaid, or overpaid for each workday in question. *Id.* In light of these defenses and arguments, Plaintiff discounted Hacienda Post Acute's maximum exposure by 60% for the risk of non-certification, and an additional 60% to account for Hacienda Post Acute's defenses on the merits or failing to recover the full amount sought, to arrive at an estimated total of approximately \$15,719. *Id.*

Unreimbursed Expenses: \$36,108

Plaintiff alleges that Hacienda Post Acute failed to reimburse Class Members for a reasonable portion of cellular phone expenses even though Class Members were required to use their personal cellular phones for daily work activities. Blakely Decl., ¶ 18. Based on Hacienda

1 Post Acute's data, Plaintiff estimated that Class Members worked approximately 10,030
2 aggregate months during the Class Period. *Id.* Assuming a \$20.00 reimbursement per month for
3 cellular phone data for work-related activities, Plaintiff calculated Hacienda Post Acute's
4 maximum exposure at approximately \$200,600 (\$20.00 unreimbursed cellular phone data *
5 10,030 months). *Id.*

6 However, Hacienda Post Acute argues that it did not require Class Members to use their
7 cellular phones in the discharge of their work duties. Blakely Decl., ¶ 18. Hacienda Post Acute
8 further contends that cellular phone expenses would be minimal due to the availability of low-
9 cost cellular phone plans. *Id.* Lastly, Hacienda Post Acute argues that this claim is not suitable
10 for class treatment, as it would require individualized determinations as to whether each Class
11 Member used a personal cellular phone for work-related purposes and if so, how much of that use
12 was a reasonable percentage of their individual monthly phone bill. *Id.* Therefore, in light of these
13 arguments and the presence of the arbitration agreements, Plaintiff discounted the maximum
14 exposure by 55% for the risk of non-certification, and an additional 60% for risk of losing on the
15 merits, to arrive at an estimated exposure of \$36,108. *Id.*

16 **Waiting Time Penalties: \$161,108**

17 Hacienda Post Acute's records reflected approximately 461 former Class Members who
18 are eligible for waiting time penalties. Blakely Decl., ¶ 19. Based on an hourly rate of \$16.64,
19 Plaintiff estimated the average waiting time penalty per former employee to be approximately
20 \$3,994 (\$16.64 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Hacienda Post
21 Acute's maximum exposure for potential waiting time penalties to be approximately \$1,841,234
22 (461 former employees * \$3,994 average penalty). *Id.*

23 Hacienda Post Acute presented several defenses to this claim, most notably their assertion
24 that because they possessed good-faith defenses to the underlying claims, any failure to pay wages
25 was not "willful" as a matter of law. Blakely Decl., ¶ 19. Hacienda Post Acute further asserts that
26 Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee
27 experienced the alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is
28 derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Hacienda Post

Acute's defenses, both as to class certification and on the merits, as to his underlying claims. *Id.* To account for Hacienda Post Acute's defenses, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification and an additional 75% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$161,108. *Id.*

Wage Statement Penalties: \$83,650

Plaintiff alleges that Hacienda Post Acute is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 20. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff's analysis reflected that there were approximately 239 unique employees and approximately 9,878 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. *Id.* Plaintiff, therefore, assumed the maximum \$4,000.00 penalty for each employee and calculated Hacienda Post Acute's potential wage statement exposure at approximately \$956,000 (239 employees * \$4,000 maximum penalty)]. *Id.*; *see also* Labor Code § 226(e).

In light of Hacienda Post Acute's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 65% for risk of non-certification, and by an additional 75% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$83,650. Blakely Decl., ¶ 20.

PAGA Penalties: \$49,390

Plaintiff estimated a maximum total PAGA exposure of approximately \$987,800 (9,878 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 21; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Hacienda Post Acute disputes vigorously.

1 Blakely Decl., ¶ 21; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D.
2 Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its
3 underlying claims). Hacienda Post Acute also asserts that the Court would drastically reduce any
4 award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 21; *see also Thurman v. Bayshore*
5 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA
6 penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx),
7 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore,
8 Plaintiff discounted the maximum figure by 75% for the risk of losing on the merits and/or not
9 recovering a PAGA penalty for each and every pay period, and an additional 80% to account for
10 the possibility of this Court reducing penalties, to arrive at an estimated exposure of
11 approximately \$49,390. Blakely Decl., ¶ 21.

12 Using these estimated figures for each of the claims described above, Plaintiff predicted
13 that the potential realistic recovery for the Settlement Class would be approximately \$619,815.
14 Blakely Decl., ¶ 22. The proposed Settlement of \$500,000 represents approximately 81% of the
15 reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate
16 since the Settlement will provide significant monetary relief to the Settlement Class, which is
17 consistent with what Plaintiff’s counsel believes could have been recovered had the case
18 proceeded through trial.

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

20 “Parties represented by competent counsel are better positioned than courts to produce a
21 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
22 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
23 by competent, experienced counsel who possess extensive experience prosecuting and defending
24 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
25 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6. *see also* Declaration of Paul K. Haines (“Haines
26 Decl.”), ¶¶ 2-8; Declaration of Alexandra R. McIntosh (“McIntosh Decl.”), ¶¶ 2-4. Class Counsel,
27 with the help of a retained expert, conducted an in-depth review of Hacienda Post Acute’s
28 timekeeping and payroll records and drew on their extensive experience in similar cases to assess

1 the strengths and weaknesses of Plaintiff’s case. *See* Blakely Decl., ¶¶ 14-22. The Settlement was
2 also reached with the assistance of an experienced and respected wage-and-hour class action
3 mediator. *Id.*, at ¶ 11. This factor strongly supports preliminary approval of the Settlement. *See*
4 *Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

12 The proposed Settlement reflects approximately 81% of the estimated recovery the
13 Settlement Class could reasonably expect in light of the significant litigation risks and will
14 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
15 percentage of the liability exposure recovered in this case far exceeds percentages routinely
16 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
17 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
18 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
19 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
20 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
21 be acceptable even though it amounts to only a fraction of the potential recovery that might be
22 available to the Settlement Class members at trial”). Further, the average Individual Settlement
23 Payment of approximately \$528.50 is in line with average payments achieved in other wage and
24 hour class action settlements.⁵ Thus, Plaintiff submits that the proposed settlement is within the

25
26 ⁵ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
27 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
28 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
(Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*

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

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, a full-day mediation before an experienced wage and hour mediator, and
8 additional months of negotiating the long-form settlement agreement. Thus, the Settlement is
9 entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As
10 discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping
11 and payroll data, and conducted a detailed statistical analysis of the data with the help of a retained
12 expert to arrive at his estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-22. Thus,
13 this factor supports preliminary approval.

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

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

20
21 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
22 of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
23 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
24 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
25 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
26 DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average
27 recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-
28 SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an
average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
compelling defenses to liability; Plaintiff also notes several similar actions where the gross
recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 deficiencies, this factor supports preliminary approval.

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

3 The Settlement Class satisfies the criteria for certification of a settlement class under
4 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
5 (2) common questions of law and fact predominate over individual questions such that class
6 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's
7 claims are typical of the claims of absent Class Members; and (4) Plaintiff and his counsel will
8 fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

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

10 A class is "ascertainable" where the members "may be readily identified without
11 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
12 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
13 defined as all non-exempt hourly employees who worked for Hacienda Post Acute in California
14 during the Class Period. Therefore, Class Members can be identified from Hacienda Post Acute's
15 personnel and employment records. Hacienda Post Acute represents that the Settlement Class
16 consists of approximately 503 current and former non-exempt employees. *See* Blakely Decl., ¶
17 13. It would therefore be impracticable to bring all Class Members before the Court or for each
18 Class Member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies
19 numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10
20 beneficiaries of a trust sufficiently numerous).

21 **2. Common Issues of Law and Fact Predominate**

22 The focus in a certification dispute is not on the merits but rather on what types of
23 questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc.*
24 *v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated on,
25 among other issues, Hacienda Post Acute's uniform meal and rest period policies/practices. These
26 types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom*
27 *Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period
28 claims).

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

2 The typicality requirement is satisfied where class representatives have claims that are
3 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
4 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
5 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
6 of those held by the Class Members. First, Hacienda Post Acute employed Plaintiff as a non-
7 exempt employee during the Class Period, and Plaintiff was subject to Hacienda Post Acute's
8 wage and hour policies at issue in this case. *See* Adams Decl., ¶ 2. Second, Plaintiff was injured
9 by the same challenged policies/practices that allegedly injured the Settlement Class as a whole.
10 For example, Plaintiff asserts that he was deprived of all legally compliant meal and rest periods.
11 Plaintiff further asserts that he did not receive accurate and compliant wage statements and did
12 not receive all wages at the time of separation of employment. *See generally*, Adams Decl.
13 Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the
14 typicality requirement is satisfied.

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

17 The adequacy requirement examines conflicts of interest between named parties and the
18 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
19 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
20 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
21 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
22 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
23 indication that Class Counsel were not qualified and the named plaintiff had no interests
24 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
25 and hour class action litigation. *See* Haines Decl., ¶¶ 2-8; Blakely Decl., ¶¶ 2-6.

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

27 This Court should order distribution to the Settlement Class of the proposed Class Notice
28 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address

1 information provided by Hacienda Post Acute. *See* Settlement, § 54(b). This manner of giving
2 notice is the “best notice practicable” under the circumstances because it provides “individual
3 notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle &*
4 *Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be
5 administered by Phoenix Settlement Administrators. (“Phoenix”), an experienced class action
6 settlement administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and
7 attached exhibits. Class Members’ addresses will be ascertainable through Hacienda Post Acute’s
8 personnel and payroll records, which Hacienda Post Acute will provide to Phoenix within fourteen
9 (14) calendar days of Class Counsel providing notice that preliminary approval has been granted.
10 *See* Settlement, § 54(a). Within fourteen (14) calendar days of receipt of the Class Members’
11 addresses, Phoenix will run the names of all Class Members through the National Change of
12 Address database to update addresses and mail the Class Notice to all Class Members. *Id.*, at §
13 54(b). To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any
14 Class Member’s current mailing address. *Id.*, at § 54(c).

15 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
16 because it advises Class Members of the nature of the claims, basic contentions and denials of the
17 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the
18 Settlement and the procedures by which to do so, explains the recovery formula and expected
19 recovery amount for each Class Member, and advises them that they will be bound by the terms
20 of the Settlement if they do not opt-out. *See* Blakely Decl., Exh. 1 to Exh. A. The proposed Class
21 Notice will also notify Class Members of the final approval hearing date and provides the
22 Settlement Class contact information for Class Counsel and advises Class Members that they may
23 enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies
24 California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class
25 Members.

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

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

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

2 **V. CONCLUSION**

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

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7 Dated: December 1, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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9 By:



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