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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LOURDES NUNEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FATHERS OF ST. CHARLES d/b/a Villa
Scalabrini, an Illinois corporation; and DOES 1
through 100,

Defendants.

Case No.: 21STCV29250

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

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

Date: October 25, 2023
Time: 10:00 a.m.
Dept.: SSC-10

Complaint Filed: August 9, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
3 on October 25, 2023 at 10:00 a.m. in Department SSC-10 of the above-entitled Court, located at
4 312 North Spring Street, Los Angeles, California 90012, Plaintiff Lourdes Nunez (“Plaintiff”)
5 individually and on behalf of a class of similarly situated individuals, will and hereby does move
6 this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
9 certification of the following Settlement Class defined as follows:
10 All current and former non-exempt employees employed by Defendant
11 Fathers of St. Charles d/b/a Villa Scalabrini in California from August 9,
12 2017 through December 31, 2022 (the “Class Period”).
- 13 3. Preliminary appointment of Plaintiff as Class Representative;
- 14 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R.
15 McIntosh of Haines Law Group, APC, as Class Counsel;
- 16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to permit a Class Representative Service Award to Plaintiff, civil
18 penalties payable to the LWDA, settlement administration costs, and attorneys’ fees
19 and costs to Class Counsel;
- 20 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
21 Administrator for mailing notices;
- 22 7. An order granting Plaintiff’s unopposed request to file a Second Amended Class and
23 Representative Action Complaint adding a cause of action for waiting time penalties
24 pursuant to Labor Code §§ 201-203; and
- 25 8. Approval of the proposed Class Notice and an order that it be disseminated to the
26 proposed Settlement Class as provided in the Settlement Agreement.

26 ///

27 ///

28 ///

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

6
7 Respectfully submitted,

8 Dated: September 15, 2023

HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Lourdes Nunez (hereinafter “Plaintiff”) brought this class and representative
4 action for various wage and hour violations on behalf of current and former non-exempt
5 employees of Defendant Fathers of St. Charles d/b/a Villa Scalabrini (“Villa Scalabrini”) who
6 worked for Villa Scalabrini in California from August 9, 2017 through December 31, 2022 (the
7 “Class Period”). The primary issues in this case pertain to Villa Scalabrini’s allegedly unlawful
8 meal and rest period policies/practices, its failure to pay all overtime wages due to its regular rate
9 miscalculations, and its facially deficient wage statements. As a result of these alleged violations,
10 Plaintiff contends Villa Scalabrini is liable for waiting time penalties and civil penalties under the
11 Private Attorneys’ General Act (“PAGA”).¹

12 Plaintiff now respectfully requests that this Court preliminarily approve this non-
13 reversionary, common-fund class action settlement,² in which Villa Scalabrini has agreed to pay
14 Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) to the following Settlement
15 Class:

16 All current and former non-exempt employees employed by Defendant
17 Fathers of St. Charles d/b/a Villa Scalabrini in California from August 9,
18 2017 through December 31, 2022 (the “Class Period”)

19 If the Settlement is approved, Villa Scalabrini will pay a non-reversionary Gross
20 Settlement Amount (“GSA”) of \$750,000.00. After deducting administration costs, Plaintiff’s
21 requested Class Representative Service Award, the amount set aside as PAGA civil penalties, and

22 ¹ Plaintiff’s proposed Second Amended Class and Representative Action Complaint (“SAC”)
23 pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
24 wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6)
25 unfair competition in violation of Cal. Business & Professions Code § 17200, *et seq.*; (7) civil
26 penalties under the Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.* (“PAGA”);
and (8) waiting time penalties. The proposed SAC is attached to the Declaration of Sean M.
Blakely as **Exhibit C**.

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

1 requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately
2 \$412,500.00 will be distributed to all Settlement Class members who do not opt out of the
3 Settlement based on the proportionate number of workweeks worked by each Settlement Class
4 member during the Class Period. Former employees with standing for waiting time penalties, and
5 employees with standing for wage statement and PAGA civil penalties (subject to a one-year
6 statute of limitations) will also receive additional consideration for their release of these penalty
7 claims.

8 Significantly, Settlement Class members do not need to file a claim to reap the financial
9 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
10 unless they affirmatively opt-out. There are approximately 287 Settlement Class members, and
11 **the average payment to participating Settlement Class members is projected to be**
12 **approximately \$1,437.28.** This is an excellent result for Settlement Class members, who will be
13 releasing only those claims alleged in the Action.

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

19 **II. SUMMARY OF THE LITIGATION**

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

21 Villa Scalabrini has operated a retirement center in Sun Valley, California since July 1979,
22 providing various levels of assisted living to elderly residents. *See* Declaration of Sean M. Blakely
23 ("Blakely Decl."), ¶ 8. Villa Scalabrini operates a "Special Care Unit," which includes 58 beds in
24 its skilled nursing unit and provides all aspects of assisted daily living to these residents (i.e.,
25 bathing, grooming, and dressing). *Id.* Villa Scalabrini also operates an "Independent Living"
26 program, which provides residential services to elderly individuals who need less assistance with
27 daily activities, and the "La Piazza," which are individual residences, where Villa Scalabrini
28 provides maintenance services, housekeeping and laundry services, and daily meal services to

1 these residents. *Id.* Plaintiff worked for Villa Scalabrini as a non-exempt cook from approximately
2 September 2012 through April 2022. *See* Declaration of Lourdes Nunez In Support of Approval
3 of Class Action Settlement (“Nunez Decl.”), ¶ 2.

4 On August 9, 2021, Plaintiff filed her Class Action Complaint in Los Angeles County
5 Superior Court, alleging that Villa Scalabrini: (i) failed to pay all minimum wages; (ii) failed to
6 pay all overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and
7 permit all legally compliant rest periods; (v) failed to issue accurate, itemized wage statements;
8 and (vi) engaged in unfair competition in violation of California Business & Professions Code §
9 17200 *et seq.* Blakely Decl., ¶ 9. That same day, Plaintiff sent her PAGA notice letter to the
10 LWDA. *Id.*; **Exhibit B** (LWDA Letter). Subsequently, on October 14, 2021, Plaintiff filed the
11 First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for
12 civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et*
13 *seq. Id.* As part of the Settlement, the Parties have stipulated to the filing of Plaintiff’s Second
14 Amended Class and Representative Action Complaint (“SAC”) which adds a cause of action for
15 waiting time penalties pursuant to Labor Code §§ 201-203. *Id.*, at ¶ 10; **Exhibit C** (SAC).
16 Plaintiff requests that the Court approve the filing of the SAC as of the date of preliminary
17 approval.

18 **B. PLAINTIFF’S CLAIMS AND VILLA SCALABRINI’S DEFENSES**

19 **1. Meal Period Claims**

20 Plaintiff alleges that due to Villa Scalabrini’s scheduling policies/practices, first meal
21 periods were frequently late (commencing after the fifth hour of work) and/or short (i.e., less than
22 a full 30 minutes). Blakely Decl., ¶ 15. Plaintiff further alleges that Settlement Class members
23 were not provided with second meal periods when they worked shifts in excess of 10.0 hours in
24 a workday. *Id.*, at ¶ 16.

25 Villa Scalabrini counters it has maintained compliant written meal period policies
26 throughout the Class Period and has always provided compliant meal periods in line with those
27 policies. Blakely Decl., ¶ 15. Villa Scalabrini further contends that it always provides employees
28 the opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker*

1 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, Villa
2 Scalabrini argues that any non-compliant meal periods resulted from lawful employee waiver or
3 choice, rather than any policy and/or practice of Villa Scalabrini. *Id.* With respect to second meal
4 periods, Villa Scalabrini asserts that many employees choose to waive their second meal periods
5 on shifts over 10.0 hours and under 12.0 hours, as they may do under Labor Code § 512(a), so
6 that they do not need to stay at work for an extra unpaid 30 minutes. *Id.*, at ¶ 16. Finally, Villa
7 Scalabrini maintains Plaintiff’s meal period claim is not suited for class certification since
8 individual inquiries would be needed to assess which employees, if any, took non-compliant or
9 missed meal periods, how many meal periods were non-compliant or missed, the reasons why a
10 particular employee did not take a meal period on a particular shift, and for second meal periods,
11 whether they waived the meal period. *Id.*, ¶¶ 15-16.

12 **2. Rest Period Claims**

13 Plaintiff alleges that Villa Scalabrini failed to authorize and permit all legally compliant
14 off-duty rest periods due to chronic understaffing and the work demands imposed on employees
15 by Villa Scalabrini. Blakely Decl., ¶ 17. Plaintiff also reports that supervisors regularly
16 interrupted rest breaks and employees were often forced to work through their rest periods. *Id.*
17 Furthermore, Plaintiff alleges that Villa Scalabrini failed to authorize and permit a third rest
18 period during shifts in excess of 10.0 hours. *Id.*

19 Villa Scalabrini counters that it has maintained compliant written rest period policies
20 throughout the Class Period and has always authorized and permitted employees a 10-minute rest
21 period for each four (4) hours worked, or major fraction thereof, as required under the Wage
22 Order, and that any failure to take rest periods was a result of employee choice, rather than any
23 Villa Scalabrini policy and/or practice. Blakely Decl., ¶ 17. Villa Scalabrini also argues that
24 Plaintiff’s rest period claim is not amenable to class treatment, since individual inquiries would
25 be required to determine which employees failed to take rest periods, how many rest periods they
26 failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift.
27 *Id.* These manageability concerns are especially present with respect to rest period claims, Villa
28 Scalabrini argues, given that rest periods are not recorded. *Id.*

1 **3. Regular Rate Miscalculations**

2 Plaintiff alleges that Villa Scalabrini failed to pay all overtime wages owed to Plaintiff
3 and members of the putative class by failing to include the value of all non-discretionary
4 remuneration into the “regular rate” of pay. Blakely Decl., ¶ 18. Specifically, Plaintiff alleges that
5 following the COVID-19 outbreak, Villa Scalabrini began paying employees a non-discretionary
6 bonus for showing up for their scheduled shift, offering \$20 or \$10 to non-exempt employees
7 who came to work for their scheduled shift. *Id.* Plaintiff alleges that Villa Scalabrini failed to
8 include the value of these bonuses into the regular rate of pay for purposes of calculating overtime,
9 resulting in an underpayment of wages to the putative class. *Id.*

10 Villa Scalabrini contends that it properly included all forms of remuneration when
11 calculating the regular rate of pay, and therefore, paid all overtime wages to Settlement Class
12 members. Blakely Decl., ¶ 18. Villa Scalabrini further argues that Settlement Class members
13 received different types of bonuses throughout the Class Period, creating substantive differences
14 among the Settlement Class members with respect to the incentives received, making class
15 certification unlikely. *Id.*

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

17 Plaintiff contends that Villa Scalabrini underpaid Settlement Class members due to its
18 allegedly unlawful rounding policies/practices. Blakely Decl., ¶ 19. Plaintiff contends that
19 although Villa Scalabrini’s timekeeping system recorded hours worked to the minute, Villa
20 Scalabrini rounded all time-punches to the nearest quarter-hour, resulting in an underpayment of
21 wages to Settlement Class members. *Id.*

22 However, Villa Scalabrini argues that its rounding policies/practices were lawful, since it
23 was both neutral on its face and resulted, over time, in employees being paid for all hours worked.
24 Blakely Decl., ¶ 19. Villa Scalabrini also contends that multiple Courts of Appeal have found
25 rounding mechanisms to be lawful under similar circumstances. *See, e.g., Ferra v. Loews*
26 *Hollywood Hotel, LLC*, 40 Cal.App.5th 1239, 1254 (2019) (review granted on other grounds)
27 (affirming summary judgment for employer on rounding claim where employees were underpaid
28 on 54.6% of shifts, finding that such facts do not establish that employees were “systematically

undercompensate[d]”); *AHMC Healthcare, Inc. v. Superior Court*, 24 Cal.App.5th 1014, 1028 (2018) (affirming summary judgment for employer where “bare majority” of employees were underpaid due to rounding). Additionally, Villa Scalabrini asserts Plaintiff would be unable to certify a rounding class given the individualized inquiries as to whether Settlement Class members were in fact underpaid, or potentially overpaid, for each workday in question. *Id.*

5. Waiting Time Penalties

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Villa Scalabrini failed to comply with its final pay obligations set forth in Labor Code §§ 201-203. Blakely Decl., ¶ 20.

Villa Scalabrini argues that it possesses strong, good faith defenses to Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages Blakely Decl., ¶ 20; see *also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.”). Villa Scalabrini further asserts that Plaintiff’s waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. Blakely Decl., ¶ 20.

6. Wage Statement Claims

As a result of the unpaid wages and unpaid meal and rest period premium wages described above, Plaintiff alleges that Villa Scalabrini is liable for wage statement penalties. Blakely Decl., ¶ 21. Plaintiff also asserts that the wage statements that Villa Scalabrini issued to its non-exempt employees violate Labor Code § 226(a)(8) because the wage statements fail to list the legal entity of the employer. *Id.* Specifically, the wage statements issued to Plaintiff list “Villa Scalabrini (9682)” as the employer instead of Fathers of St. Charles, which Plaintiff alleges is the legal entity registered with the California Secretary of State. *Id.*

Villa Scalabrini argues any alleged wage statement violations were not “knowing and intentional,” and Plaintiff cannot show she or other employees “suffer[ed] injury” due to the

1 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
2 penalties. Blakely Decl., ¶ 21. Further, Villa Scalabrini contends its wage statements always
3 accurately reflected hours worked and amounts paid as well as all other required information,
4 precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22
5 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the
6 pay stubs were accurate in that they correctly reflected the hours worked and the pay
7 received...The purpose of section 226 is to *document the paid wages* to ensure the employee is
8 fully informed regarding the calculation of those wages.”) (Italics in original). With respect to
9 Plaintiff’s allegation that the wages statements issued did not list the legal entity of the employer,
10 Villa Scalabrini contends that the wage statements were compliant because “Villa Scalabrini” is
11 the recorded fictitious business name in California. Blakely Decl., ¶ 21; *see Savea v. YRC Inc.*,
12 34 Cal.App.5th 173 (2019) (holding that employer’s use of recorded fictitious business name on
13 wage statements did not violate the Labor Code’s wage statement requirements).

14 **7. PAGA Civil Penalties**

15 As a result of the foregoing Labor Code violations, Plaintiff alleges that Villa Scalabrini
16 is liable for civil penalties under the PAGA. Blakely Decl., ¶ 22.

17 Since Plaintiff’s PAGA claim is derivative of Plaintiff’s underlying wage claims, Villa
18 Scalabrini asserts the PAGA claim would fail with those claims. Blakely Decl., ¶ 22; *see Price v.*
19 *Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action
20 fail, the derivative UCL and PAGA claims also fail.”). Villa Scalabrini further maintains that,
21 given its good faith defenses, this Court would exercise its discretion to substantially reduce any
22 PAGA penalties if it were to find Villa Scalabrini liable for any of Plaintiff’s claims. *Id.*; *see* Lab.
23 Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1135 (2012)
24 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487
25 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%
26 in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30
27 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where
28 employer made “good faith attempts” to comply with the law).

1 **C. DISCOVERY AND MEDIATION**

2 In connection with mediation, the Parties engaged in extensive informal discovery.
3 Blakely Decl., ¶ 11. Villa Scalabrini produced a 20% sampling of timekeeping and payroll records
4 for non-exempt employees during the Class Period, as well as its relevant written wage and hour
5 policies/procedures. *Id.* Villa Scalabrini also provided relevant data points such as the total
6 number of workweeks in the Class Period and the total number of Settlement Class members
7 employed by Villa Scalabrini in California during the Class Period, including the total numbers
8 of Settlement Class members who qualified for the Wage Statement and Waiting Time Classes.
9 *Id.* Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a
10 comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Villa
11 Scalabrini to create a detailed exposure analysis for all claims at issue. *Id.* This discovery allowed
12 the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of
13 Plaintiff's claims, and Villa Scalabrini's potential defenses. *Id.*

14 On July 12, 2022, the Parties participated in a full-day mediation with Marc Feder, Esq.,
15 a well-respected wage and hour class action mediator. Blakely Decl., ¶ 12. During mediation, the
16 Parties vigorously debated their opposing legal positions, the likelihood of certification of
17 Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* The Parties did not reach a
18 settlement at mediation; however, the Parties continued their negotiations through Mr. Feder in
19 the months following mediation. *Id.* Ultimately, Mr. Feder issued a mediator's proposal for a
20 class-wide settlement, which was accepted by both sides. *Id.* During the months that followed,
21 the Parties finalized the terms of the Settlement and executed the long-form Settlement
22 Agreement now before the court. *Id.*

23 **III. THE PROPOSED SETTLEMENT**

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

25 If the Court preliminarily approves the Settlement, Villa Scalabrini will pay a Gross
26 Settlement Amount ("GSA") of \$750,000.00. *See* Settlement, § 3. Significantly, this Settlement
27 is non-reversionary, and no Settlement Class member will have to submit a claim form to receive
28 an Individual Settlement Award. *Id.*, at §§ 3-4. Each Settlement Class member will automatically

1 receive an Individual Settlement Award unless they affirmatively opt out of the Settlement. *Id.*
2 The monetary terms of the Settlement are summarized below:

3	• Gross Settlement Amount (“GSA”):	\$750,000.00
4	• Minus Court-approved attorneys’ fees:	\$250,000.00
5	• Minus Court-approved verified costs (up to):	\$30,000.00
6	• Minus Court-approved Service Award:	\$7,500.00
7	• Minus amount set aside as PAGA penalties:	\$40,000.00
8	• <u>Minus estimated settlement administration costs:</u>	<u>\$10,000.00</u>
9	Net Settlement Amount (“NSA”):	\$412,500.00
10	• Plus 25% “PAGA Amount” to Settlement Class:	\$10,000.00
11	Total Amount Paid to Settlement Class Members:	\$422,500.00

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

13 After deducting amounts for the Court-approved attorneys’ fees and costs, Class
14 Representative Service Award to Plaintiff, the amount set aside as PAGA civil penalties, and
15 settlement administration costs, the Settlement requires Villa Scalabrini to pay a Net Settlement
16 Amount (“NSA”) of at least \$412,500.00 to all Settlement Class members who do not timely opt-
17 out. *See* Settlement, § 4(A). The NSA shall be distributed to participating Settlement Class
18 members as follows: Eighty percent (80%) of the NSA shall be distributed to each participating
19 Settlement Class member based on their proportionate number of workweeks worked during the
20 Class Period. *See* Settlement, § 4(B)(i) Ten percent (10%) of the NSA shall be designated the
21 “Wage Statement Amount” and distributed to each Settlement Class member based on their
22 proportionate number of workweeks worked from August 9, 2020 through December 31, 2022.
23 *Id.*, at § 4(B)(iii). Ten percent (10%) of the NSA shall be designated as the “Waiting Time
24 Amount” and distributed as equal, pro-rata shares to each participating Settlement Class member
25 whose employment with Villa Scalabrini ended at any time from August 9, 2018 to December
26 31, 2022. *Id.*, at § 4(B)(ii). Additionally, Ten Thousand Dollars (\$10,000.00) of the Gross
27 Settlement Amount has been designated as the “PAGA Amount” and shall be distributed to the
28 Aggrieved Employees (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., August 9, 2020,
until December 31, 2022) proportionally based on the number of pay periods worked during that
time period. *Id.*, at § 4(B)(iv).

1 According to Villa Scalabrini, there are approximately 287 Settlement Class members.
2 Blakely Decl., ¶ 14. Therefore, the average Individual Settlement Award from the NSA is
3 projected to be approximately \$1,437.28. *Id.* There are also approximately 185 Aggrieved
4 Employees during the PAGA Period who will each receive an average of approximately \$54.05
5 from the PAGA Amount. *Id.* Settlement Class members will have forty-five (45) calendar days
6 from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing
7 ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement,
8 §§ 9(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound
9 by its terms and will release all claims against Villa Scalabrini included within the Settlement.
10 *See Id.*, at § 2(A).

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

12 Plaintiff will apply for Class Representative Service Award at the time of seeking final
13 approval of the proposed class action settlement in the amount of \$7,500.00 for her service to the
14 Settlement Class. *See* Settlement, §§ 3(C)(3), 6; Blakely Decl., ¶ 26. “[I]ncentive awards are fairly
15 typical in class action cases . . . and are intended to compensate class representatives for work
16 done on behalf of the class [and] to make up for financial or reputational risk undertaken in
17 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
18 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Service Award
19 is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class,
20 including providing substantial factual information and documents to Class Counsel, discussing
21 the claims and theories at issue in the litigation, actively participating in the prosecution of her
22 claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named
23 plaintiff in this case. *See* Blakely Decl., ¶ 26; *see also* Nunez Decl., ¶¶ 4-6.

24 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
25 Settlement Amount, which is currently estimated to be \$250,000.00, and up to \$30,000.00 in
26 verified costs reimbursement. *See* Settlement, §§ 3(C)(4), (5); Blakely Decl., ¶ 25. Plaintiff
27 submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
28 time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred

1 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims,
2 conducting legal research, conducting extensive informal discovery, analyzing Settlement Class
3 members' timekeeping and payroll records with the help of a retained expert, creating a
4 comprehensive damages model, preparing for and attending mediation, negotiating and preparing
5 the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id.*
6 Class Counsel expects to expend additional attorney time in attending the hearing on this Motion,
7 overseeing the Notice process and fielding questions from Settlement Class members, preparing
8 the Final Approval papers, and attending the Final Approval hearing. *Id.*

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

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

22 Additionally, the parties have agreed to designate \$40,000.00 of the Gross Settlement
23 Amount as PAGA civil penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with
24 the remaining \$10,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
25 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(C)(5).
26 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
27 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
28 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund

1 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
2 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
3 settlement).

4 **IV. ARGUMENT**

5 **A. PRELIMINARY APPROVAL IS WARRANTED**

6 California Rule of Court 3.769 conditions settlement of a class action on court approval,
7 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
8 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
9 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
10 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
11 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
12 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
13 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
14 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
15 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial
16 presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class
17 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
18 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

19 **1. Standard for Preliminary Approval**

20 To make a fairness determination, the Court should consider several factors, including:
21 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
22 litigation, the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
24 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
25 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
26 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
27 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
28 reasonable in light of the overall balance of factors in this case.

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

2 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff
3 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
4 described above in section II.B., *supra*, Villa Scalabrini presented multiple defenses to Plaintiff's
5 claims, both on the merits and with respect to class certification. Thus, while Plaintiff was
6 prepared to litigate these claims through class certification and ultimately trial, success was far
7 from certain.

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

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

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

17 Plaintiff has not yet filed her motion for class certification, and as such, the extent to which
18 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
19 was a risk that there would not be a certified class at the time of trial, or if there were, it would
20 consist of a significantly smaller group of employees than the proposed Settlement Class (either
21 due to a narrowing of the class definition in a Court order on a contested motion for class
22 certification, or through settlement agreements entered into by Villa Scalabrini with individual
23 class members by way of *Pick Up Stix* type settlement agreements³), and the expected recovery
24

25 _____
26 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

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 positive recovery for the Settlement Class in the face of disputed claims. Plaintiff, with the help of her retained expert, conducted a detailed analysis of alleged meal and rest period premium payments owing, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

First Meal Period Violations: \$375,153

Plaintiff alleges that Villa Scalabrini failed to provide compliant first meal periods to its non-exempt employees. Blakely Decl., ¶ 15. Based on Plaintiff's expert's review and extrapolation of the timekeeping records Villa Scalabrini produced, there were approximately 95,753 non-compliant meal periods reflected in the data. *Id.* Plaintiff also calculated the average hourly rate of pay to be approximately \$15.83 per hour. *Id.* Therefore, Plaintiff calculated Villa Scalabrini's maximum exposure for first meal period violations at approximately \$1,515,770 (95,753 non-compliant first meal periods * \$15.83 average meal period premium). *Id.*

However, as noted above, Villa Scalabrini contends that it maintained compliant meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 15. Villa Scalabrini also asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that, as described above, it has always done so, and any non-complaint first meal periods in the timekeeping records were the result of lawful employee waiver or choice. *Id.* Villa Scalabrini also maintains that the first meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees took non-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 Villa Scalabrini's maximum exposure by 45% for the risk of non-certification, and an additional 55% to account for Villa Scalabrini's defenses on

1 the merits or failing to recover the full amount sought, to arrive at an estimated total of
2 approximately \$375,153. *Id.*

3 **Second Meal Period Violations: \$14,813**

4 Plaintiff's expert's analysis and extrapolation of the timekeeping data revealed that there
5 were approximately 4,456 shifts in excess of 10.0 hours during the Class Period without a
6 compliant second meal period. Blakely Decl., ¶ 16. Plaintiff therefore calculated Villa
7 Scalabrini's maximum exposure for second meal period violations at approximately \$70,538
8 (4,456 non-compliant second meal periods * \$15.83 average premium). *Id.*

9 However, Plaintiff's theory of liability carried significant risks of both non-certification
10 and on the merits if Plaintiff was able to certify this claim, based on, *inter alia*, Villa Scalabrini's
11 argument that it has maintained compliant written meal period policies throughout the Class
12 Period, and that Settlement Class members voluntarily waived their second meal period on shifts
13 in excess of 10.0 hours but less than 12.0 hours per Labor Code § 512. Blakely Decl., ¶ 16. As
14 with Plaintiff's first meal period claim, Villa Scalabrini argues that individualized inquiries would
15 preclude class certification for this claim as well. *Id.* In light of these risks, Plaintiff discounted
16 the maximum amount that the class could potentially recover by 40% for the risk of non-
17 certification and an additional 65% for the risk of losing on the merits, or having exposure reduced
18 due to Villa Scalabrini's waiver arguments, to arrive at estimated exposure of \$14,813. *Id.*

19 **Rest Period Violations: \$126,473**

20 During the Class Period, Plaintiff alleges that she and other non-exempt employees were
21 not authorized and permitted to take all legally compliant rest periods, due to chronic
22 understaffing and the work demands imposed upon them by Villa Scalabrini. Blakely Decl., ¶ 17.
23 Based on Plaintiff's expert's analysis and extrapolation of employee timekeeping records, there
24 were approximately 163,050 shifts in excess of 3.5 hours worked by Settlement Class members
25 during the Class Period, and Plaintiff estimates that employees were not provided with duty-free
26 rest periods on approximately 40% of all shifts, resulting in a maximum exposure of \$1,032,433
27 (163,050 rest period eligible shifts * 40% * \$15.83 average premium). *Id.*

28 However, as discussed above, Villa Scalabrini argues that it always maintained and

1 enforced lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 17.
2 Villa Scalabrini also maintains that any failure to take rest periods was the result of employee
3 waiver or choice, and that it is not required to police rest periods. *Id.* Villa Scalabrini further
4 argues that Plaintiff’s rest period claim is not amenable to class treatment as individualized
5 inquiries would be required to determine which employees failed to take rest periods, and the
6 reasons why each employee failed to take a rest period on a particular shift. *Id.* These
7 considerations are particularly present with respect to rest periods, Villa Scalabrini argues, as rest
8 periods are not—and need not be—recorded. *Id.* In light of these defenses, Plaintiff discounted
9 the maximum amount that the class could potentially recover by 65% for risk of non-certification,
10 and discounted an additional 65% for risk of being unsuccessful on the merits or failure to recover
11 the full amount sought, to arrive at a projected exposure of \$126,473. *Id.*

12 **Regular Rate Miscalculations: \$6,150**

13 Plaintiff alleges that Villa Scalabrini miscalculated employees’ regular rate of pay by
14 failing to include non-discretionary COVID attendance bonuses into the “regular rate” when
15 calculating overtime pay. Blakely Decl., ¶ 18. Based on the data provided by Villa Scalabrini,
16 Plaintiff calculated Villa Scalabrini’s maximum potential liability to be approximately \$10,250
17 in unpaid overtime due to the regular rate violations during the Class Period. *Id.*

18 As stated above, Villa Scalabrini contends that it has paid all overtime wages, and further
19 argues that employees received different types of bonuses throughout the Class Period, creating
20 substantive differences among the Settlement Class Members with respect to the incentives
21 received, making class certification unlikely. Blakely Decl., ¶ 18. In light of Villa Scalabrini’s
22 defenses, Plaintiff discounted the maximum exposure by 20% for a risk of non-certification, and
23 an additional 25% for a risk of being unsuccessful on the merits, to arrive at an estimated exposure
24 of \$6,150. *Id.*

25 **Unpaid Wages Due to Rounding: \$12,785**

26 Based on Plaintiff’s review of employee timekeeping records, when looking at all shifts
27 in the timekeeping data, there was an average *overpayment* of 0.80 minutes per shift. Blakely
28 Decl., ¶ 19. As stated above, Villa Scalabrini argued that its timekeeping policies were neutral

1 and resulted in Settlement Class members being compensated for all hours actually worked. *Id.*
2 This was borne out by the timekeeping data, which showed that approximately 42% of all shifts
3 reflected an underpayment, approximately 50% of all shifts reflected an overpayment, and
4 approximately 8% of all shifts were neutral *Id.* Therefore, only looking at shifts where there was
5 an underpayment, Plaintiff estimates that Villa Scalabrini's maximum exposure for this claim is
6 approximately \$91,323 (5,769 hrs. * \$15.83 average hourly rate). *Id.* Villa Scalabrini raised
7 several defenses to this claim, including its argument that it utilized an even-handed timekeeping
8 system that, on balance, resulted in employees being paid for all hours actually worked; that the
9 majority of shifts reflected an *overpayment* as a result of its rounding practices; and that Plaintiff
10 would be unable to certify this claim given the individualized inquiries as to whether employees
11 were in fact underpaid, or overpaid for each workday in question. *Id.* Based on these defenses,
12 Plaintiff discounted the maximum exposure by 65% to account for the risk of non-certification,
13 and an additional 60% to account for Villa Scalabrini's defenses on the merits, to arrive at an
14 estimated exposure of approximately \$12,785. *Id.*

15 **Waiting Time Penalties: \$78,640**

16 Villa Scalabrini's records show approximately 69 Settlement Class members who
17 separated their employment with Villa Scalabrini since August 9, 2018 and are therefore eligible
18 for waiting time penalties. Blakely Decl., ¶ 20. Based on an hourly rate of \$15.83, Plaintiff
19 estimated the average waiting time penalty per former employee to be approximately \$3,799
20 (\$15.83 * 8 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Villa Scalabrini's
21 maximum exposure for potential waiting time penalties to be approximately \$262,131 (69 former
22 employees * \$3,799 average penalty). *Id.*

23 Villa Scalabrini presented several defenses to this claim, most notably their assertion that
24 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., ¶ 20. Villa Scalabrini 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 Villa

Scalabrini's defenses, both as to class certification and on the merits, as to his underlying claims. *Id.* To account for Villa Scalabrini's defenses, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification and an additional 50% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$78,640. *Id.*

Wage Statement Penalties: \$177,600

Plaintiff alleges that Villa Scalabrini is liable for wage statement penalties as a result of the unpaid wages and unpaid meal and rest period premiums, and because its wage statements failed to list the legal entity of the employer. Blakely Decl., ¶ 21. 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 expert's analysis reflected that there were approximately 185 unique employees and approximately 7,624 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 Villa Scalabrini's potential wage statement exposure at approximately \$740,000 (185 employees * \$4,000 maximum penalty)]. *Id.*; *see also* Labor Code § 226(e).

In light of Villa Scalabrini'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 40% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$177,600. Blakely Decl., ¶ 21.

PAGA Penalties: \$57,180

Plaintiff estimated a maximum total PAGA exposure of approximately \$762,400 (7,624 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 22; *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

1 wage and hour violations discussed above, which Villa Scalabrini disputes vigorously. *Id.*; see
2 e.g., *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that
3 a PAGA claim’s success was determined by the merits of its underlying claims). Villa Scalabrini
4 also asserts that the Court would drastically reduce any award of PAGA penalties as
5 “confiscatory.” Blakely Decl., ¶ 22; see also *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
6 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien*
7 *Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing
8 PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum
9 figure by 70% for the risk of losing on the merits and/or not recovering a PAGA penalty for each
10 and every pay period, and an additional 75% to account for the possibility of this Court reducing
11 penalties, to arrive at an estimated exposure of approximately \$57,180. Blakely Decl., ¶ 22.

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 \$848,794.
14 Blakely Decl., ¶ 23. The proposed Settlement of \$750,000 represents approximately 88.4% 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; Class Counsel, with the help of a retained expert, conducted an in-depth review
27 of Villa Scalabrini’s timekeeping and payroll records and drew on their extensive experience in
28 similar cases to assess the strengths and weaknesses of Plaintiff’s case. The Settlement was also

1 reached with the assistance of an experienced and respected wage-and-hour class action mediator.
2 Blakely Decl., ¶ 12. This factor strongly supports preliminary approval of the Settlement. *See*
3 *Kullar, supra*, 168 Cal.App.4th at 130.

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

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

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

11 The proposed Settlement reflects approximately 88.4% of the estimated recovery the
12 Settlement Class could reasonably expect in light of the significant litigation risks and will
13 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
14 percentage of the liability exposure recovered in this case far exceeds percentages routinely
15 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
16 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
17 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
18 representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
19 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
20 be acceptable even though it amounts to only a fraction of the potential recovery that might be
21 available to the Settlement Class members at trial”). Further, the average Individual Settlement
22 Award of approximately \$1,437.28 exceeds average payments achieved in other wage and hour
23 class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the range
24

25 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
26 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
27 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
28 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*
Wholesale Corp., Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery

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

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

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel, 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 her estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 15-23. 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 Settlement Class
17 members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment,
18 and Plaintiff's Class Representative Service Award, are all reasonable and appropriate based on
19 the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports
20 preliminary approval.

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

2 The Settlement Class satisfies the criteria for certification of a settlement class under
3 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
4 (2) common questions of law and fact predominate over individual questions such that class
5 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's
6 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and her
7 counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ.
8 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 current and former non-exempt employees who worked for Villa Scalabrini in
14 California during the Class Period. Therefore, Settlement Class members can be identified from
15 Villa Scalabrini's personnel and employment records. Villa Scalabrini represents that the
16 Settlement Class consists of approximately 287 current and former non-exempt employees. *See*
17 Blakely Decl., ¶ 14. It would therefore be impracticable to bring all Settlement Class members
18 before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the
19 proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955)
20 (holding a class representing 10 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, Villa Scalabrini'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 Settlement Class members. First, Villa Scalabrini employed Plaintiff as a
7 non-exempt employee during the Class Period, and Plaintiff was subject to Villa Scalabrini's
8 wage and hour policies at issue in this case. *See* Nunez 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 she was deprived of all legally compliant meal and rest periods.
11 Plaintiff further asserts that she did not receive accurate and compliant wage statements and did
12 not receive all wages at the time of separation of employment. *See generally*, Nunez 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 her 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 Villa Scalabrini. *See* Settlement, § 9. This manner of giving notice is the
2 “best notice practicable” under the circumstances because it provides “individual notice to all
3 members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417
4 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by
5 Phoenix Settlement Administrators (“Phoenix”), an experienced class action settlement
6 administrator. *See generally* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached
7 exhibits. Settlement Class members’ addresses will be ascertainable through Villa Scalabrini’s
8 personnel and payroll records, which Villa Scalabrini will provide to Phoenix within ten (10)
9 business days of preliminary approval of the Settlement. *See* Settlement, § 9(A). Within ten (10)
10 business days of receipt of the Settlement Class members’ addresses, Phoenix will run the names
11 of all Settlement Class members through the National Change of Address database to update
12 addresses and mail the Class Notice to all Settlement Class members. *Id.*, at § 9(B). To the extent
13 that any notices are returned, Phoenix will perform a “skip trace” to track any Settlement Class
14 member’s current mailing address. *Id.*, at § 9(F).

15 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
16 because it advises Settlement Class members of the nature of the claims, basic contentions and
17 denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object
18 to the Settlement and the procedures by which to do so, explains the recovery formula and
19 expected recovery amount for each Settlement Class member, and advises them that they will be
20 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1, 2 to Exh.
21 A. The proposed Class Notice will also notify Settlement Class members of the final approval
22 hearing date and provides the Settlement Class contact information for Class Counsel and advises
23 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
24 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
25 cost-effective method of reaching Settlement Class members.

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

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

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

2 **V. CONCLUSION**

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

6
7 Dated: September 15, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



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