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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

GABRIELLE BOYD, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,
Plaintiffs,

vs.

BLUESTONE LANE HOLDINGS, LLC, a
Delaware limited liability company;
BLUESTONE LANE NY LLC, a New York
limited liability company; and DOES 1
through 50, Inclusive;
Defendants.

Case No. CGC-20-585787

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: April 26, 2022
Hearing Time: 9:30am

Department: 302

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1 **I. INTRODUCTION**

2 Plaintiff Gabrielle Boyd (“Plaintiff”) respectfully submits this memorandum in support of
3 the motion for preliminary approval of the proposed class action settlement with Defendant
4 Bluestone Lane Holdings LLC and Defendant Bluestone Lane NY LLC (“Defendants”), and seek
5 entry of an order: (1) preliminary approving the proposed settlement of this class action with
6 Defendants; (2) approving the form and method for providing class-wide notice; (3) directing that
7 notice of the proposed settlement be given to the class; and (4) scheduling a final approving hearing
8 date to consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment,
9 and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

10 Plaintiff and Defendants have reached a full settlement of the above-captioned action, which
11 is embodied in the Class Action Settlement Agreement (“Agreement”) filed concurrently with the
12 Court. A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Shani
13 O. Zakay (“Decl. Zakay”), served and filed herewith.

14 As consideration for this Settlement, the total amount to be paid by Defendants is Two
15 Hundred Sixty Thousand Dollars (\$260,000) (the “Gross Settlement Amount”). The Gross
16 Settlement amount will settle all issues pending in this litigation between the Plaintiff and the Class,
17 on the one hand, and the Defendants, on the other hand, including: Individual Settlement Payments,
18 the Class Representative Service Award, the Class Counsel Award, Class Counsel Litigation
19 Expenses Payment, PAGA settlement, and the Settlement Administration costs. The Gross
20 Settlement Amount does not include Defendants’ share of payroll taxes. The Settlement is all-in
21 with no reversion to Defendants and no need to submit a claim form. (Decl. Zakay at ¶3).

22 On October 4, 2021, the parties participated in a full day mediation before Steve Serratore,
23 Esq., a well-respected wage and hour class action mediator. The mediation concluded without
24 settlement, but following the mediation, the Parties, represented by its respective counsel, reached
25 a settlement based on Mr. Serratore’s mediator’s proposal. The parties then prepared the full
26 Agreement, which was signed by all counsel and the parties and is now presented to this Court for
27 preliminary approval. (Decl. Zakay at ¶5).

1 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
2 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
3 Agreement and enter the proposed order submitted herewith.

4 **II. DESCRIPTION OF THE SETTLEMENT**

5 The Gross Settlement Amount to be paid by Defendants is Two Hundred Sixty Thousand
6 Dollars (\$260,000). (Agreement at ¶II(O)). Under the Settlement, the Gross Settlement Amount
7 consists of the following elements: (1) Individual Settlement Payments, (2) the Class Representative
8 Service Award, (3) the Class Counsel Award, (4) PAGA Settlement, and (5) the Settlement
9 Administration Costs. (Agreement at ¶I(O)). The Gross Settlement Amount does not include
10 Defendants' share of payroll taxes. (Agreement at ¶I(O)). The Gross Settlement Amount shall be
11 all-in with no reversion to Defendants (Agreement at ¶III(A)). (Decl. Zakay at ¶15).

12 Upon final approval and the Judgment becoming Final, Defendants shall pay, via wire
13 transfer, the Gross Settlement Amount to the Settlement Administrator on the Funding Date.
14 (Agreement at ¶III(A)(3)). The Settlement Administrator shall then mail the Individual Settlement
15 Payments and Aggrieved Employee Payments within 15 days of the Funding Date. (Agreement at
16 ¶III(L)(7)). (Decl. Zakay at ¶16).

17 The Net Settlement Amount shall equal the net amount available for Settlement shares to
18 Settlement Class Members from the Gross Settlement Amount after deducting the Court-approved
19 amounts for the Class Representative Service Award, the Class Counsel Award, the PAGA
20 Settlement, and the Settlement Administration Costs. (Agreement at ¶I(Q)). The Settlement
21 Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating
22 Class Member. (Agreement at ¶III(J)). The Settlement Share for each Settlement Class Member
23 will be calculated by (a) dividing the respective Workweeks for each Class Member by the total
24 Workweeks for all Class Members, and (b) multiplying the result by the Net Settlement Amount.
25 (Agreement at ¶III(L)(1)). The entire Net Settlement Fund shall be distributed. (Decl. Zakay at
26 ¶17).

27 Class Members will have 45 days after the mailing of the Class Notice to exclude themselves
28 or submit written objections. (Agreement at ¶III(K)(7)). Class Members may choose to opt-out of

1 the Settlement by following the directions in the Notice Packet. (Agreement at ¶III(K)(7) and Ex.
2 A). All Class Members who do not “opt out” will be deemed Settlement Class Members who will
3 be bound by the Settlement and will be entitled to receive a settlement payment. (Agreement at
4 ¶III(K)(7)). Finally, the Notice Packet will advise the Class Members of their right to object to the
5 Settlement (Agreement at ¶III(K)(8) and Ex. A). (Decl. Zakay at ¶18).

6 If a check is not cashed within 90 days, the Settlement Administrator will send the
7 Settlement Class Member and/or Aggrieved Employee a letter informing him or her that unless the
8 check is cashed in the next 90 days, it will expire and become non-negotiable, and offer to replace
9 the check if it was lost or misplaced but not cashed. Any settlement checks not cashed within 180
10 days will be voided and the Participating Class Member and/or Aggrieved Employee will remain
11 bound by the Settlement. The funds from any such uncashed checks will then be reallocated and
12 redistributed by the Settlement Administrator to those Participating Class Members and/or
13 Aggrieved Employees who cashed their Settlement Share checks through a second distribution
14 using the same allocation as the first distribution. (Agreement at ¶III(L)(8)). (Decl. Zakay at ¶19).

15 The Parties have agreed to use ILYM Group, Inc. as the Settlement Administrator for the
16 Settlement (Agreement at ¶I(GG)). Payment of the expenses of the Settlement Administrator from
17 the Gross Settlement Fund shall be made for the expenses of effectuating and administering the
18 Settlement. The Settlement Administrator shall receive payment for services in an amount not to
19 exceed \$11,000. (Agreement at ¶III(L)(12)). (Decl. Zakay at ¶20).

20 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
21 not to exceed 33% of the Gross Settlement Amount as their Class Counsel Fees Payment which is
22 currently estimated to be \$86,667.67. (Agreement at ¶III(L)(10)). Class Counsel will also be
23 allowed to apply separately for an award of litigation expenses in an amount not to exceed \$25,000.
24 (Agreement at ¶III(L)(10)). In support of this request, Class Counsel will provide evidentiary
25 support, including lodestar. Subject to Court approval, the Agreement provides for payment of
26 Class Representative Service Award of no more than \$7,500 for the Plaintiff, or such lesser amount
27 as may be approved by the Court at final approval. (Agreement at ¶III(L)(9)). Defendants do not
28

1 oppose a motion for approval of attorneys' fees, costs and service awards consistent with the
2 Agreement. (Decl. Zakay at ¶21).

3 Subject to Court approval, \$10,000 will be paid from the Gross Settlement Amount for
4 settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* (Agreement at
5 ¶III(L)(11)). Pursuant to the requirements of Labor Code §2699(i) the PAGA Payment shall be
6 allocated \$7,500 to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of
7 civil penalties and \$2,500 to the Net Settlement Amount for distribution to the Aggrieved
8 Employees. (Agreement at ¶III(B)(3)). (Decl. Zakay at ¶22).

9 **III. CASE BACKGROUND**

10 On July 28, 2020, Plaintiff Gabrielle Boyd filed a Complaint against Defendants in the
11 Superior Court of the State of California, County of San Francisco. The Complaint alleged claims
12 for (1) unfair competition in violation of Cal. Business & Professions Code §§ 17200, *et seq.*; (2)
13 failure to pay overtime compensation in violation of Labor Code §§ 510, *et seq.*; (3) failure to pay
14 minimum wages in violation of Labor Code §§ 1194, 1197, & 1197.1; (4) failure to provide required
15 meal periods in violation of Labor Code §§ 226.7 & 512 and the applicable IWC wage order; (5)
16 failure to provide required rest periods in violation of Labor Code §§ 226.7 & 512 and the applicable
17 IWC wage order; (6) failure to provide accurate itemized statements in violation of Labor Code
18 §226; (7) failure to timely pay wages in violation of Labor Code §203; and (8) failure to provide
19 gratuities in violation of Labor Code § 351. (Decl. Zakay at ¶7).

20 On July 2, 2021, Plaintiff filed a First Amended Complaint adding a claim under the Private
21 Attorney General Act, California Labor Code §§ 2689 *et seq.* ("PAGA"). (Decl. Zakay at ¶8).

22 Plaintiff seeks to represent a putative class of non-exempt employees who worked for
23 Defendants in California. The Action generally alleges that Plaintiff and other non-exempt
24 employees of Defendants were not properly paid wages, including overtime compensation and tips,
25 and that meal and rest breaks were not provided in accordance with California law. The Action
26 seeks unpaid wages, penalties, civil penalties, attorneys' fees, litigation costs, and any other
27 equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue
28 of the foregoing claims. (Decl. Zakay at ¶9).

1 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
2 information in connection with the Action. As part of this process, Defendants provided documents
3 and information to Class Counsel to review and analyze. On October 4, 2021, the parties
4 participated in an all-day mediation presided over by Steve Serratore, Esq., a well-respected wage
5 and hour class action mediator. The mediation concluded without settlement, but following the
6 mediation, the Parties, represented by its respective counsel, reached a settlement based on Mr.
7 Serratore's mediator's proposal. The Parties then prepared the full Agreement which was signed
8 by the Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at ¶10).

9 Accordingly, for purposes of this Settlement, the "Class" or "Class Members" are defined
10 as all current and former non-exempt California employees employed by Defendants during the
11 Class Period. (Agreement at ¶I(G)). The Class Period is the period of time from April 6, 2016 to
12 December 3, 2021. (Agreement at ¶I(H)). (Decl. Zakay at ¶11).

13 Although a settlement has been reached, Defendants deny any liability or wrongdoing of
14 any kind associated with the claims alleged in the Action and further deny that, for any purpose
15 other than settlement, the Action is appropriate for class treatment. Defendants contend, among
16 other things, that they have correctly compensated the Class Members and complied at all times
17 with the California Labor Code, and the applicable Wage Orders. Further, Defendants contend that
18 class certification would be inappropriate for any reason other than for settlement. (Decl. Zakay at
19 ¶12).

20 Plaintiff contends that Defendants violated California wage and hour laws. Plaintiff further
21 contends that the Action is appropriate for class certification on the basis that the Plaintiff's claims
22 meet the requisites for class certification. Without admitting that class certification is proper,
23 Defendants have stipulated that the above Class may be certified for settlement purposes only.
24 (Agreement at ¶III(F)). The Parties agree that certification for settlement purposes is not an
25 admission that class certification would be proper if the class certification issues were litigated.
26 Further, the Agreement is not admissible in this or any other proceeding as evidence that the Class
27 could be certified absent a settlement. Solely for purposes of settling the Action, the Parties stipulate
28

1 and agree that the requisites for establishing class certification with respect to the Class, as defined
2 above, are satisfied. (Decl. Zakay at ¶13).

3 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
4 Counsel has diligently evaluated the Class Members' claims against Defendants. Class Counsel
5 reviewed the production of documents from the Defendants. Class Counsel conducted extensive
6 review of time records and data with the assistance of an expert. Prior to the settlement negotiations,
7 counsel for Defendants provided Class Counsel with access to the necessary data and information
8 for the Class. Based on the foregoing data and their own independent investigation, evaluation and
9 experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
10 Agreement is fair, reasonable, and adequate and are in the best interest of the Class in light of all
11 known facts and circumstances, including the risk of significant delay, the defenses asserted by
12 Defendants, and potential appellate issues. (Decl. Zakay at ¶14).

13 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 14 **COURT TO GRANT PRELIMINARY APPROVAL**

15 When a proposed class-wide settlement is reached, the settlement must be submitted to the
16 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
17 p.11-87). Preliminary approval is the first of three steps that comprise the approval procedure for
18 settlements of class actions. The second step is the dissemination of notice of the settlement to all
19 Class Members. The third step is a final settlement approval hearing, at which evidence and
20 argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented
21 and Class Members may be heard regarding the settlement. (See *Dunk v. Ford Motor Co.*, 48
22 Cal.App.4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules
23 of Court, rule 3.769.

24 The primary question presented on an application for preliminary approval of a proposed
25 class action settlement is whether the proposed settlement is “within the range of possible approval.”
26 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
27
28

1 (7th Cir. 1982).¹ Preliminary approval is merely the prerequisite to giving notice so that “the
2 proposed settlement... may be submitted to members of the prospective Class for their acceptance
3 or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
4 323 F. Supp. 364, 372 (E.D. Pa. 1970)). There is an initial presumption of fairness when a proposed
5 settlement, which was negotiated at arm's length by counsel for the Class, is presented for court
6 approval. (*Newberg*, 3d Ed., §11.41, p.11-88). However, the ultimate question of whether the
7 proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given
8 to the Class Members and a final settlement hearing is held by the Court.

9 **A. The Role of the Court in Preliminary Approval of a Class Action Settlement**

10 The approval of a proposed settlement of a class action suit is a matter within the broad
11 discretion of the trial court. (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001);
12 *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794 (1996)). Preliminary approval does not require the
13 trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and
14 adequate. That final determination is made only after notice of the settlement has been given to the
15 class members and after they have been given an opportunity to voice their views of the settlement
16 or to be excluded from the settlement. (3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85
17 (2003)).

18 In considering a potential settlement for preliminary approval purposes, the trial court does
19 not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits
20 of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal.App.4th at 239-
21 40; *Dunk, supra*, 48 Cal.App. 4th at 1807). The Ninth Circuit explains, “the very essence of a
22 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers*
23 *for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).
24 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
25

26 ¹ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts
28 are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure
for conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986),
citing *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of
2 the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73
3 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
4 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
5 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
6 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

7 With regard to class action settlements, the opinions of counsel should be given considerable
8 weight both because of counsel’s familiarity with this litigation and previous experience with cases
9 such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power*
10 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F.
11 Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74). For example, in *Lyons v. Marrud,*
12 *Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the
13 court noted that “[e]xperienced and competent counsel have assessed these problems and the
14 probability of success on the merits.... The parties’ decision regarding the respective merits of their
15 position has an important bearing.” (*Id.* at ¶ 92,520). “The recommendations of plaintiffs’ counsel
16 should be given a presumption of reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622
17 (N.D. Cal. 1979)). As a result, courts hold that the recommendation of counsel is entitled to
18 significant weight. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
19 Cal. 2004)).

20 **B. Factors to be Considered in Granting Preliminary Approval**

21 A number of factors are to be considered in evaluating a settlement for purposes of
22 preliminary approval. In determining whether to grant preliminary approval, the court considers
23 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-
24 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
25 treatment to class representatives or segments of the class, and (4) falls within the range of possible
26 approval.” (*In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No one
27 factor should be determinative, but rather all factors should be considered. The analysis has been
28 summarized as follows:

1 If the proposed settlement appears to be the product of serious, informed,
2 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
3 preferential treatment to class representatives or segments of the class, and falls
4 within the range of possible approval, then the court should direct that notice be
5 given to the class members of a formal fairness hearing, at which evidence may be
6 presented in support of and in opposition to the settlement. (*Manual of Complex
Litigation, Second* §30.44, at 229).

7 Here, the Settlement meets all of these criteria for preliminary approval.

8 **1. The Settlement is the Product of Serious, Informed and Non-collusive Negotiations.**

9 This settlement is the result of extensive and hard-fought litigation and negotiations before
10 an experienced mediator. Defendants have expressly denied and continue to deny any wrongdoing
11 or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have
12 determined that it is desirable and beneficial to the Class Members to put to rest the Released Class
13 Claims.²

14 The Parties scheduled a private mediation to take place before Steve Serratore, Esq., a
15 respected and experienced mediator of class actions and wage and hour lawsuits. In preparation for
16 the mediation, Defendants provided Class Counsel with necessary records and information for the
17 members of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger
18 Consulting Group, and prepared and submitted a mediation brief to Mediator Serratore. On October
19 4, 2021, the parties participated in a full day mediation before Mr. Serratore, and were able to reach
20 an agreement following the mediation based on Mr. Serratore's mediator's proposal. The parties
21 then prepared the full Agreement, which was signed by all counsel and the parties and is now

22 ² As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff
23 and the Settlement Class Members shall release the Released Parties from the Released Class
24 Claims. Released Class Claims are defined as all claims alleged in the operative complaint, or that
25 could have been alleged in the operative complaint based on the same facts alleged in the operative
26 complaint (including but not limited to claims under the FLSA), which occurred during the Class
27 Period, and excluding all other claims, including claims for wrongful termination, unemployment
28 insurance, disability, workers' compensation, and claims outside of the Release Period. The
Released Class Claims include, but are not limited to, a release of all claims for penalties and any
other rights and remedies pursuant to PAGA arising out of or related to the claims alleged in the
operative complaint, or that could have been alleged in the operative complaint based on the same
facts and circumstances alleged in the operative complaint. (Agreement at ¶ I(BB)).

1 presented to this Court for preliminary approval. Plaintiff and Class Counsel believe that this
2 Settlement is fair, reasonable, and adequate. (Decl. Zakay at ¶5).

3 As consideration for this Settlement, the total amount to be paid by Defendants is Two
4 Hundred Sixty Thousand Dollars (\$260,000) (the “Gross Settlement Sum”). The Gross Settlement
5 amount will settle all issues pending in this litigation between the Plaintiff and the Class, on the one
6 hand, and the Defendants, on the other hand, including: payment of all Settlement shares to
7 Participating Class Members, Class Representative Service Payment, the Class Counsel Fee
8 Payment, Class Counsel Litigation Expenses Payment, the payment to the California Labor
9 Workforce Development Agency (“LWDA Payment”), and the expenses of the Settlement
10 Administrator. The Gross Settlement Amount does not include Defendants’ share of payroll taxes.
11 The Settlement is all-in with no reversion to Defendants and no need to submit a claim form. (Decl.
12 Zakay at ¶3).

13 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
14 Counsel has diligently evaluated the Class Members’ claims against Defendants. Class Counsel
15 reviewed the production of documents from the Defendants. Class Counsel conducted extensive
16 review of time records and data with the assistance of an expert. Prior to the settlement negotiations,
17 counsel for Defendants provided Class Counsel with access to the necessary data and information
18 for the Class. Based on the foregoing data and their own independent investigation, evaluation and
19 experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the
20 Agreement is fair, reasonable, and adequate and are in the best interest of the Class in light of all
21 known facts and circumstances, including the risk of significant delay, the defenses asserted by
22 Defendants, and potential appellate issues. (Decl. Zakay at ¶14).

23 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
24 trying the Action against Defendants through possible appeals which could take several years. Class
25 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
26 complex actions such as the Action. Class Counsel is also mindful of, and recognize the inherent
27 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
28

1 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
2 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶23).

3 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
4 capable advocacy on both sides. The Parties were represented by experienced and capable counsel
5 who zealously advocated their respective positions with the assistance of an experienced mediator.
6 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
7 vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re Wash.*
8 *Public Power*, 720 F. Supp. at 1392).

9 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
10 **Approval.**

11 The proposed Settlement here has no "obvious deficiencies" and is well within the range of
12 possible approval. All Class Members will receive an opportunity to participate in the Settlement
13 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
14 III(K)(7)).

15 The calculations to compensate for the amount due for the nonpayment of wages at the time
16 this Settlement was negotiated were calculated by Berger Consulting Group, Plaintiff’s damage
17 expert. For the Class, Plaintiff determined that Defendants were subject to maximum liability for
18 damages in the amount of \$963,778 consisting of \$111,276 for unpaid wages, \$659,802 for rest
19 break violations and \$192,700 for meal break violations. (Decl. Zakay at ¶6).

20 Consequently, the settlement of \$260,000.00 represents approximately 27% of the value of
21 the maximum damages at issue, assuming all of these amounts could be proved at trial. Given the
22 amount of the settlement as compared to the potential value of claims in this case, the settlement is
23 fair and reasonable. Clearly, the goal of this litigation to provide compensation to class members
24 for unpaid time and for rest breaks allegedly missed has been met. (Decl. Zakay at ¶6).

25 In *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) the federal
26 district court for the Northern District of California approved a settlement of an action claiming
27 unpaid wages where the settlement amount constituted approximately 25% of the estimated actual
28 damages to the class. Here, the settlement consideration exceeds the percentage approved in *Glass*.

1 In *Glass*, the federal court ruled that the settlement which represented approximately 25% of the
2 estimated loss to the class was fair, reasonable, and adequate. (*Id.* at 28). Similarly, in *Stovall-*
3 *Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) the court
4 approved a settlement of an action claiming unpaid wages where the settlement amount constituted
5 roughly 10% of the estimated actual damages to the class. Here, the settlement consideration far
6 exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court ruled that the
7 settlement which represented approximately 10% of the estimated loss to the class was fair,
8 reasonable, and adequate.

9 As a result, this settlement, which exceeds the percentage approved in *Glass* and *Stovall-*
10 *Gusman*, is entitled to preliminary approval.

11 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
12 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Here, a number of defenses asserted by
13 Defendants presented serious threats to the claims of Plaintiff and the other Class Members.
14 Defendants asserted that their employment practices complied with all applicable Labor Laws.
15 Defendants could also argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
16 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the
17 meal period claim, rest period claim, off-the-clock claims, and any claims derivative thereto. If
18 successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class.
19 While Plaintiff believes that these defenses could be overcome, Defendants maintain that these
20 defenses have merit and therefore present a serious risk to recovery for the Class. (Decl. Zakay at
21 ¶24).

22 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
23 to obtain class certification and thereby not recover on behalf of any employee other than herself.
24 Defendants argued that the individual experience of each employee varied with respect to the
25 alleged claims. While other cases have approved class certification of wage and hour claims, class
26 certification in this action would have been hotly disputed and was by no means a foregone
27 conclusion. Finally, even if class certification was successful, as demonstrated by the California
28 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are

1 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
2 (Decl. Zakay at ¶25).

3 After arm's-length negotiations between experienced and informed counsel, the parties
4 recognized the potential risks and agreed on the settlement of \$260,000. As the federal court
5 recently held in *Glass*, where the parties faced uncertainties similar to those here:

6 In light of the above-referenced uncertainty in the law, the risk, expense,
7 complexity, and likely duration of further litigation likewise favors the settlement.
8 Regardless of how this Court might have ruled on the merits of the legal issues, the
9 losing party likely would have appealed, and the parties would have faced the
10 expense and uncertainty of litigating an appeal. "The expense and possible duration
11 of the litigation should be considered in evaluating the reasonableness of [a]
12 settlement." See *Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
13 (9th Cir. 2000).

14 Here, the risk of further litigation is substantial. Furthermore, here, a risk that the action
15 will be dismissed and the plaintiff be compelled to arbitration exists as well.

16 **3. The Settlement Does Not Improperly Grant Preferential Treatment to Class** 17 **Representatives or Segments of The Class**

18 The relief provided in the settlement will benefit all members of the Class. The settlement
19 does not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to
20 the Class Members are all determined under a neutral methodology. All Class Members will receive
21 the same opportunity to participate in and receive payment through a neutral formula that is based
22 upon the weeks worked for that individual. (Decl. Zakay at ¶4).

23 Plaintiff will apply to the Court for a service payment in consideration for her service and
24 for the risks undertaken on behalf of the Class. (Agreement at ¶III(L)(9)). Plaintiff performed her
25 duties admirably by working with Class Counsel. (Decl. Zakay at ¶27). At this stage, the requested
26 Plaintiff's service payment is well within the accepted range of awards for purposes of preliminary
27 approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal.
28 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
Info. Solutions, Inc., 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S.
Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class

1 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
2 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
3 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
4 (awarding \$25,000 service award in overtime class action and a pool of \$100,000.00 in
5 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
6 to compensate the employees for the time and effort expended on the case, for the risk of litigation,
7 for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate
8 the statutory rights of all employees. 2007 WL 22162 at *16-17.

9 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary**
10 **Approval Of The Settlement**

11 The stage of the proceedings at which this settlement was reached also militates in favor of
12 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
13 a thorough investigation into the facts of the class action. Class Counsel began investigating the
14 Class Members' claims before this action was filed. Class Counsel performed significant review
15 and analysis of Defendants' documents. Class Counsel engaged in a thorough research and analysis
16 of the relevant claims and data with the assistance of an expert. Class Counsel was also experienced
17 with the claims at issue here, as Class Counsel previously litigated and settled similar claims in
18 numerous other actions. Accordingly, the agreement to settle did not occur until Class Counsel
19 possessed sufficient information to make an informed judgment regarding the likelihood of success
20 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶28).

21 Based on the foregoing data and their own independent investigation and evaluation, Class
22 Counsel is of the opinion that the settlement with Defendants for the terms set forth in the
23 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
24 known facts and circumstances, including the risk of significant delay, defenses asserted by
25 Defendants, and numerous potential appellate issues. There can be no doubt that Counsel for both
26 parties possessed sufficient information to make an informed judgment regarding the likelihood of
27 success on the merits and the results that could be obtained through further litigation. (Decl. Zakay
28 at ¶29).

1 In *Glass*, the Northern District of California granted final approval of an overtime wage
2 action although in *Glass* no formal discovery had been conducted prior to the settlement:

3 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
4 observed, however, "[i]n the context of class action settlements, 'formal discovery
5 is not a necessary ticket to the bargaining table' where the parties have sufficient
6 information to make an informed decision about settlement." See *In re Mego
Financial Corp. Securities Litigation*, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist.
LEXIS 8476 at *14).

7 Here, Class Counsel was in an equally strong position to evaluate the fairness of this
8 settlement because Class Counsel had the same sufficient information, as well as document
9 production, independent investigations and due diligence to confirm the accuracy of the information
10 supplied by Defendants.

11 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

12 Plaintiff contends that the proposed settlement meets all the requirements for class
13 certification under the California Code of Civil Procedure §382 as demonstrated below, and
14 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
15 should conditionally certify the Class for settlement purposes only, defined as follows:

16 All current and former non-exempt California employees employed by Defendants during
17 the Class Period. (Agreement at ¶II(G)).

18 The Class Period is the period from April 6, 2016 to December 3, 2021. (Agreement at ¶II(H)). The
19 Parties estimate that there are 562 Class Members who collectively worked 14,000 workweeks.
20 (Agreement at ¶III(A)(2)).

21 **A. California Code of Civil Procedure §382**

22 Plaintiffs seek certification of this Class for settlement purposes under California Code of
23 Civil Procedure § 382. The California Supreme Court has summarized the standard for determining
24 whether class certification is appropriate as follows:

25 Code of Civil Procedure Section 382 authorizes class actions "when the question is
26 one of a common or general interest, of many persons, or when the parties are
27 numerous, and it is impracticable to bring them all before the court...." The party
28 seeking certification has the burden to establish the existence of both an
ascertainable class and a well-defined community of interest among class members.
(*citations omitted*). The "community of interest" requirement embodies three
factors: (1) predominant common questions of law or fact; (2) class representatives
with claims or defenses typical of the class; and (3) class representatives who can

adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004)).

While Defendants reserve all rights to dispute that the Plaintiff can satisfy any of these requirements, Defendants will not dispute that these requirements may be satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified for purposes of settlement.

B. The Proposed Class Is Ascertainable and Numerous

Plaintiff brings this action on behalf of a class of non-exempt employees during the applicable Class Period. All of these employees are ascertainable because the class members can readily be determined through examination of Defendants' employment files. Given that the class consists of 562 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Here, the approximately 562 current and former non-exempt employees that comprise the Class can be identified based on Defendants' records and are sufficiently numerous for class certification. (Decl. Zakay at ¶30).

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. (1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334).

Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.")). Whether Plaintiff is likely to prevail on her theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003)).

1 Here, Plaintiff contends that common questions of law and fact are present, and specifically
2 the common questions of whether Defendants' employment practices were lawful, whether
3 Defendants failed to pay all wages, whether Defendants failed to properly provide and/or pay for
4 meal and rest periods, and whether the Class is entitled to compensation and related penalties.
5 (Decl. Zakay at ¶30). Defendants will not oppose such a finding for purposes of this settlement
6 only.

7 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

8 The typicality requirement requires Plaintiff to demonstrate that the members of the class
9 have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of
10 the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v.*
11 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
12 (9th Cir. 1998), the Ninth Circuit held that "[u]nder the rule's permissive standards, representative
13 claims are 'typical' if they are reasonably coextensive with those of absent class members; they
14 need not be substantially identical." (50 F.3d at 1020).

15 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
16 Plaintiff, like every other member of the Class, was employed by Defendants and is a member of
17 the Class. Plaintiff was subject to the same employment practices concerning payment of wages
18 and meal and rest periods. Thus, the claims of the Plaintiff and the Class Members arise from the
19 same course of conduct by the Defendants, involve the same employment policies, and are based
20 on the same legal theories. (Decl. Zakay at ¶30). For purposes of settlement, the typicality
21 requirement is met as to the common issues presented in this case. Defendants dispute that the
22 typicality requirement is satisfied, but does not oppose a finding of typicality for purposes of this
23 settlement only.

24 **E. The Class Representatives Fairly and Adequately Protected the Class**

25 Plaintiff contends that the Class Members are adequately represented here because Plaintiff
26 and representing counsel (a) do not have any conflicts of interest with other class members, and (b)
27 will prosecute the case vigorously on behalf of the class (*See Hanlon* 150 F.3d at 1020). These
28 requirements are met here. First, Plaintiff is well aware of her duties as the representative of the

1 Class and has actively participated in the prosecution of this case to date. She effectively
2 communicated with counsel, provided documents to counsel, and participated in discovery,
3 investigation, and negotiations in the Action. (Decl. Zakay at ¶30). Second, Plaintiff retained
4 competent counsel who are experienced in employment class actions. (Decl. Zakay at ¶¶30 and
5 31). Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both
6 the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal
7 theories. (Decl. Zakay at ¶30).

8 **F. The Superiority Requirement Is Met**

9 To certify a class, the Court must also determine that a class action is superior to other
10 available methods for the fair and efficient adjudication of the controversy. “Where classwide
11 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
12 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
13 1234 (9th Cir. 1996)). As courts have previously observed:

14 Absent class treatment, each individual plaintiff would present in separate,
15 duplicative proceedings the same or essentially the same arguments and evidence,
16 including expert testimony. The result would be a multiplicity of trials conducted
17 at enormous expense to both the judicial system and the litigants. “It would be
18 neither efficient nor fair to anyone, including defendants, to force multiple trials to
hear the same evidence and decide the same issues.” (*Sav-On*, 34 Cal. 4th at 340,
citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991)).

19 Here, a class action is the superior mechanism for resolution of the claims as pled by the
20 Plaintiff. While Defendants would dispute that the superiority requirement may be satisfied in the
21 absence of a settlement, it will not dispute such a finding for purposes of this settlement only.

22 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

23 The Court has broad discretion in approving a practical notice program. The parties have
24 agreed upon procedures by which the Class Members will be provided with written notice of the
25 Settlement similar to that approved and utilized in hundreds of class action settlements. In
26 accordance with the Agreement, within 10 days after the Court enters its order granting Preliminary
27 Approval of the Settlement, Defendants will provide to the Settlement Administrator an electronic
28 database containing the Class Data. (Agreement at ¶ III(K)(1)). Within 14 days after receiving the

1 Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members
2 via first-class regular U.S. Mail to their last known addresses. (Agreement at ¶ III(K)(3)).

3 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
4 counsel and to be approved by the Court, includes all relevant information (See Exhibit A to the
5 Agreement). The Class Notice will include, among other information: (i) information regarding the
6 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
7 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
8 estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and
9 litigation expenses to be sought; (vi) the amount of the Plaintiff's service award request; (vii) the
10 amount being paid to the LWDA; and (viii) the administration fees to be paid to the Settlement
11 Administrator. (Decl. Zakay at ¶32).

12 The Class Notice documents will state that the Class Members shall have forty-five (45)
13 days from the date that the Class Notice is mailed to them to request exclusion or to submit an
14 objection. (Agreement at ¶III(K)(7)). The Class Members will be given an opportunity to object
15 to the terms of the Agreement and/or the request for attorneys' fees and costs and to participate at
16 the final approval hearing, in accordance with the instructions set forth in the Class Notice.
17 (Agreement at ¶III(K)(8)). Class Members who do not opt out will automatically receive a
18 settlement payment. (Agreement at ¶III(K)(7)). This notice program was designed to meaningfully
19 reach the Class Members and advises them of all pertinent information concerning the settlement.
20 (Decl. Zakay at ¶32). The mailing and distribution of the Class Notice satisfies the requirements of
21 due process and is the best notice practicable under the circumstances and constitutes due and
22 sufficient notice to all persons entitled thereto. The Class Notice provides information on the terms
23 and provisions of the settlement; the benefits that the settlement provides for Class Members; the
24 date, time, and place of the final settlement approval hearing; and the procedure and deadline for
25 submitting comments, objections, and requests for exclusion. The Class Notice complies with
26 Rules of Court 3.766 and 3.769(f).

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