

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

IRIS ASTUDILLO, an individual,
CRYSTAL DELGADO, an individual, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

TORRANCE HEALTH ASSOCIATION,
INC., a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **20STCV18424**

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

Hearing Date: May 25, 2023
Hearing Time: 9:00 a.m.

Judge: Hon. Elihu M. Berle
Dept.: SS-6

Action Filed: May 11, 2020
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Iris Astudillo and Crystal Delgado (“Plaintiffs”) respectfully submit this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendant Torrance Health Association, Inc. (“Defendant”), and seeks entry of an
5 order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which consists of both the Wage and Hour
7 Class (“all individuals who are or previously were employed by Defendant in California and classified
8 as a nonexempt employee at any time during the Wage and Hour Class Period (May 11, 2016 through
9 February 21, 2023)”) and the Background Check Class (“all individuals who executed Defendant’s
10 background check disclosure form at any time during the Background Check Class Period (May 11,
11 2013 through February 21, 2023)”); (3) provisionally appointing Plaintiffs as the representatives of the
12 Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
13 Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug Bhowmik
14 De Blouw LLP as Class Counsel; (5) approving the form and method for providing class-wide notice;
15 (6) directing that notice of the proposed settlement be given to the class; (7) appointing ILYM Group
16 as Administrator, and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion for
17 final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of
18 attorneys’ fees and expenses. Plaintiffs and Defendant (collectively the “Parties”) have reached a full
19 and final settlement of the above-captioned action, which is embodied in the Class Action, Collective
20 Action and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy
21 of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug
22 (“Decl. Nordrehaug”), served and filed herewith. The form of the Agreement is based upon the Los
23 Angeles County Superior Court model form for a class and PAGA settlement, and a redline comparison
24 is attached as Exhibit #2 to the Decl. Nordrehaug.

25 The consideration for this Settlement is One Million Seventy-Three Thousand Twenty-Five
26 Dollars and Zero Cents (\$1,073,025.00) (the “Gross Settlement Amount”), of which Defendant has

27 _____
28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 already paid \$73,025 for individual settlement agreements to Class Members, and Defendant shall pay
2 out the additional total sum of \$1,000,000, as set forth in the Agreement. The Gross Settlement
3 Amount will settle all issues pending in the Action between the Parties and will settle the Released
4 Class Claims in exchange for the payments to Participating Class Members from the Net Settlement
5 Amount. The Gross Settlement Amount includes (a) the costs of administration of the settlement, (b)
6 all attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties
7 payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.28.)
8 The Gross Settlement Amount does not include the employer's share of payroll taxes which will be
9 separately paid by Defendant. (Id.) The Settlement is all-in with no reversion to Defendant and no
10 need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

11 The following are the key financial terms of the Settlement and the proposed deductions:

12 **\$1,073,025** (Gross Settlement Amount)

- 13 - \$73,025 (Defendant already paid for individual settlements)
- 14 - \$20,000 (Plaintiffs' proposed service award not to exceed \$10,000 each)
- 15 - \$95,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 16 - \$357,675 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- 17 - \$20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 18 - \$30,000 (Administration Expenses Payment - not to exceed amount)
- 19 - \$98,900 (Background Check Class payments - \$50 per person)

20 **\$378,425** (Net Settlement Amount)

21 Based upon 1,395 Wage and Hour Class Members who collectively worked 178,000 Workweeks, the
22 Gross Settlement Amount provides an average value of \$645 per Class Member and \$5 per Workweek
23 and after deductions the Net Settlement Amount provides an average recovery of \$271 per Class
24 Member and a recovery of \$2.12 per Workweek. Decl. Nordrehaug at ¶6.

25 On February 1, 2021, the Parties participated in an all-day mediation session presided over by
26 Jeffrey Krivis, a respected and experienced mediator of wage and hour class actions. The matter did
27 not settle at the mediation, but the Parties continued to negotiate through the mediator, and eventually
28 agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized
in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair,
reasonable and adequate, and should be preliminarily approved because there is a substantial monetary
payment, and there are significant litigation and class-certification risks. Therefore, Plaintiffs
respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed

order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is One Million Seventy-Three Thousand Twenty-Five Dollars and Zero Cents (\$1,073,025.00) of which Defendant has already paid \$73,025 for individual settlement agreements to Class Members. Defendant shall pay out the additional total sum of \$1,000,000, as set forth in the Agreement. (Agreement at ¶ 1.28.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) payment of Background Check Class Payments at a flat rate of \$50 per individual; (3) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (4) Administration Expenses Payment; (5) the Class Representative Service Payments to Plaintiffs; and (6) the PAGA Penalties payment. (Agreement at ¶ 1.28.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

Within fourteen (14) days of the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members along with the other Court-approved distributions shall be made by the Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

The amount remaining in the Gross Settlement Amount after the deduction of Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, Background Check Class Payments, and the \$73,025 already paid by Defendant (called the "Net Settlement Amount") shall be allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.34 and 3.2.) From the Net Settlement Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Wage and Hour Class Members during the Class Period and (b) multiplying the result by each Participating Wage and Hour Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendant's

1 records, however, Class Members will have the right to challenge the number of Workweeks. The
2 Background Check Class Payments will be paid out at a flat rate of \$50 per individual. (Agreement
3 at ¶ 3.2(d).) Decl. Nordrehaug at ¶17.

4 Class Members may choose to opt-out of the Settlement by following the directions in the Class
5 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
6 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
7 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
8 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
9 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
10 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
11 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
12 Decl. Nordrehaug at ¶18.

13 A Participating Class Member must cash his or her Individual Class Payment check within 180
14 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
15 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
16 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
17 of C.C.P. § 384(b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

18 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
19 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
20 administration in an amount not to exceed \$30,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

21 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
22 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
23 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
24 Litigation Expenses Payment in an amount not to exceed \$95,000. (Agreement at ¶ 3.2(b).) Subject
25 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs
26 as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

27 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
28 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,

1 *et seq.* ("PAGA"). The PAGA Penalties are \$20,000. (Agreement at ¶¶ 1.34 and 3.2(g).) Pursuant to
2 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
3 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
4 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
5 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(g).) As
6 set forth in the accompany proof of service, the LWDA has been served with this motion and the
7 Agreement. Decl. Nordrehaug at ¶22.

8 **III. CASE BACKGROUND**

9 The description of the case and claims, along with the procedural history is set forth in the
10 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in a thorough investigation and
11 exchanged documents and information in connection with the Action over two years which permitted
12 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
13 Parties participated in mediation on February 24, 2021 with Jeffrey Krivis, which after arms' length
14 negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug, ¶12.

15 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 16 **GRANT PRELIMINARY APPROVAL**

17 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
18 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
19 California "[p]ublic policy generally favors the compromise of complex class action litigation."
20 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
21 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
22 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
23 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
24 denied, 459 U.S. 1217 (1983)).

25 Preliminary approval is the first of three steps that comprise the approval procedure for
26 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
27 members. The third step is a final settlement approval hearing, at which evidence and argument
28 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class

1 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
2 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

3 The primary question presented on an application for preliminary approval of a proposed class
4 action settlement is whether the proposed settlement is “within the range of possible approval.”
5 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
6 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
7 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
8 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
9 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
10 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
11 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
12 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
13 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
14 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
15 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
16 settlement is given to the class members and a final settlement hearing is held by the Court.

17 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

18 The approval of a proposed settlement of a class action suit is a matter within the broad
19 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
20 Preliminary approval does not require the trial court to answer the ultimate question of whether a
21 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
22 of the settlement has been given to the class members and after they have been given an opportunity
23 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
24 *Federal Practice* §§23.80 - 23.85 (2003).

25
26 ² 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 are
28 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 In considering a potential settlement for preliminary approval purposes, the trial court does not
2 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
3 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk,*
4 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
5 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
6 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
7 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
8 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
9 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
10 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
11 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
12 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

13 With regard to class action settlements, the opinions of counsel should be given considerable
14 weight both because of counsel’s familiarity with this litigation and previous experience with cases
15 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
16 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
17 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
18 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
19 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
20 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

21 **B. Factors To Be Considered In Granting Preliminarily Approval**

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

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

5 *Manual of Complex Litigation, Second* § 30.44, at 229.

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

7 **1. The Settlement is the Product of Serious, Informed and**
8 **Arm's Length Negotiations by Experienced Counsel**

9 This settlement is the result of extensive and hard-fought litigation as well as negotiations
10 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
11 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
12 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
Class Claims of the Class in accordance with this Settlement.³

13 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
14

15 ³ The release applicable to the Wage and Hour Class is appropriately tethered to allegations in the
16 Action and the "Released Wage and Hour Class Claims" are narrowly defined as "all claims that were
17 alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint,
18 including failure to pay minimum wages, straight time compensation, overtime compensation,
19 double-time compensation, and interest thereon; failure to timely pay regular and final wages; the
20 calculation of the regular rate of pay; wages lost from time rounding and timekeeping; noncompliant
21 (e.g., missed, short, late, and/or interrupted) meal periods and rest periods; failure to provide meal
22 periods; failure to authorize and permit rest periods; the calculation and payment of meal period and
23 rest period premiums; payment for all hours worked, including off-the-clock work and uncompensated
24 work time; wage statements and paystubs, including wage statements and paystubs furnished or
25 available in physical, electronic, or other forms; failure to pay sick pay wages; failure to properly
26 calculate sick pay wages; failure to keep accurate records; failure to reimburse for all necessary
27 business expenses; unfair business practices; recordkeeping penalties, wage statement penalties,
28 minimum wage, penalties, and waiting-time penalties; statutory penalties and civil penalties; interest
for claims for unpaid wages; and attorneys' fees and costs; claims under the California Labor Code
including sections 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 224, 226, 226.3, 226.7, 233,
246, 246.5, 248.5, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, and 2802);
the Wage Orders of the California Industrial Welfare Commission; and California Business and
Professions Code section 17200, et seq." (Agreement at ¶ 6.3.) Except as expressly set forth in the
Agreement, Participating Wage and Hour Class Members do not release any other claims, including
claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation. The Released Wage and
Hour Class Claims are limited to the Wage and Hour Class Period. (Agreement at ¶ 6.3.)

1 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
2 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
3 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
4 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
5 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
6 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
7 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

8 The Parties attended an arms-length mediation session with Jeffrey Krivis, a respected and
9 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
10 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
11 information regarding the Class Members, various internal documents, and other compensation and
12 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
13 Berger Consulting and prepared and submitted a mediation brief to the mediator. Although a settlement
14 was not reached at the mediation, the Parties continued to negotiate through the mediator. The final
15 settlement terms were negotiated and set forth in the Agreement now presented for this Court's
16 approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this
17 Settlement is fair, reasonable and adequate.

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
19 One Million Seventy-Three Thousand Twenty-Five Dollars and Zero Cents (\$1,073,025.00). The
20 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.
21 Nordrehaug at ¶ 3.

22 Class Counsel has conducted an investigation into the facts of the class action. Extensive formal
23 discovery was performed, which included relevant depositions and the production of more than a
24 thousand of pages of documents. The motion for class certification was fully briefed and was pending
25 at the time the settlement was reached. Class Counsel engaged in a thorough review and analysis of
26 the relevant documents and data with the assistance of an expert. Accordingly, the agreement to settle
27 did not occur until Class Counsel possessed sufficient information to make an informed judgment
28 regarding the likelihood of success on the merits and the results that could be obtained through further

1 litigation. In addition, Class Counsel previously negotiated settlements with other employers in actions
2 involving nearly identical issues and analogous defenses. Based on the foregoing data and their own
3 independent investigation, evaluation and experience, Class Counsel believes that the settlement with
4 Defendant on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best
5 interest of the Class in light of all known facts and circumstances, including the risk of significant
6 delay, defenses asserted by Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

7 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
8 trying this Action against Defendant through possible appeals which could take several years. Class
9 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
10 class actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems
11 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
12 Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the
13 best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

14 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
15 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
16 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
17 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
18 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

19 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within** 20 **the Range for Approval**

21 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
22 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
23 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,395 Wage and
24 Hour Class Members who collectively worked 178,000 Workweeks, the Gross Settlement Amount
25 provides an average value of \$645 per Class Member and \$5 per Workweek and after deductions the
26 Net Settlement Amount provides an average recovery of \$271 per Class Member and a recovery of
27 \$2.12 per Workweek. Decl. Nordrehaug, ¶6.

28 The calculations to compensate for the amount due for the Class at the time of the mediation

1 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
2 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
3 wages for the employees. The maximum potential damages were calculated to be \$609,092 for the
4 alleged unpaid wages due to rounding, \$37,462 for unpaid wages due to the alleged miscalculation of
5 the regular rate, \$2,348,282 for alleged meal period damages based upon the potential violations
6 observed in the records, \$2,348,282 for alleged rest period damages based upon the same rate observed
7 with meal periods, \$218,750 for alleged unreimbursed business expenses for personal cell phone usage
8 at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that
9 Defendant was subject to a maximum damage claim in the amount of \$5,561,868. As to potential
10 penalties, Plaintiffs calculated that potential waiting time penalties were a maximum of \$3,219,840 and
11 potential wage statement penalties were \$2,542,250, depending on the predicate violation. Defendant
12 vigorously disputed Plaintiffs' calculations and exposure theories. Consequently, the Gross Settlement
13 Amount represents more than 18% of the maximum value of the alleged wage and hour damages at
14 issue in this case at the time this Settlement was negotiated.⁴ The above maximum calculations should
15 then be adjusted in consideration for both the risk of class certification and the risk of establishing
16 class-wide liability on all claims. Decl. Nordrehaug, ¶6.

17 As to the Background Check Class, FCRA provides for statutory damages of \$100 to \$1,000
18 per willful violation. 15 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the
19 1,978 individuals in the FCRA Class is between \$197,800 and \$1,978,000. A comparison of approved
20 FCRA settlements involving similar facts further confirms the reasonableness of this Settlement. The
21 Court in *Pietras v. Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases,
22 which settled for an average of \$34.59 per class member." Similarly, in *Bailes v. Lineage Logistics,*
23 *LLC*, 2016 U.S. Dist. LEXIS 110943 (D. Kan 2016), the District Court approved a FCRA class
24 settlement which provided for a fund of \$149,205 for a class of 3,430, which correlates to \$43.50 per
25 person. In *Feist v. Petco Animal Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge
26

27 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
28 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

1 Marilyn Huff granted preliminary approval to an FCRA class settlement of \$1.2 million for a class of
2 37,000, which equates to \$32.43 per person.⁵ Here, the Settlement allocation of \$50 per FCRA Class
3 Member is certainly fair and reasonable given the prior approved FCRA settlements and the defenses
4 asserted by Defendant. Given the amount of the Settlement as compared to the potential value of the
5 claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been
6 met. Decl. Nordrehaug, ¶6.

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
9 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
10 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant also
11 argued that individual settlements with nearly half the Class barred their claims and thus the Class-wide
12 damages were cut in half. Defendant argued that all work time was paid for and that any rounding was
13 facially neutral and therefore lawful. Defendant contends that its meal and rest period policies fully
14 complied with California law and Defendant did not fail to provide the opportunity for legally required
15 meal and rest breaks. Defendant contended that there was no failure to pay for business expenses and
16 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
17 required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,

19 ⁵ See also *Moore v. Aerotek, Inc.*, 2017 WL 2838148, at *4 (S.D. Ohio 2017) (per-capita gross
20 recovery of \$25 in FCRA case); *Aceves v. Autozone Inc.*, No. 5:14-cv-2032, ECF No. 58 (C.D. Cal.
21 2016) (approval of FCRA settlement with gross recovery of \$20 per class member); *Patrick v.*
22 *Interstate Mgmt. Co., LLC*, No. 8:15-cv-1252, ECF No. 42 (M.D.Fla. 2016) (approval of FCRA claim
23 where class members received \$9 each); *Landrum v. Acadian Ambulance Serv., Inc.*, No. 14-cv-1467,
ECF No. 37 (S.D. Tex. 2015) (approval of FCRA disclosure settlement of \$10 per person); *Walker v.*
McClane/Midwest, Inc., No. 2:14-cv-04315, ECF No. 29 (W.D. Mo. 2015) (\$24 per person).

24 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to
2 the meal and rest period claims. Defendant also argues that based on its facially lawful practices,
3 Defendant acted in good faith and without willfulness, which if accepted would negate the claims for
4 waiting time penalties and/or inaccurate wage statements. As to the background check claim,
5 Defendant argued that its forms complied with FCRA in all respects. *Coleman v. Kohl's Dep't Stores,*
6 *Inc.*, 2015 U.S. Dist. LEXIS 135746, *17 (N.D. Cal. 2015) (holding a release in a separate document
7 does not violate FCRA); *Luna v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055,
8 *18-*19 & n.6 (C.D. Cal. 2018). Finally, the court may find remitter/reduction of the statutory
9 damages appropriate. *See e.g. Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS
10 81029, 2007 WL 3118505, at *5 (E.D.Pa. 2007). If successful, Defendant's defenses could eliminate
11 or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
12 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
13 recovery by the Class. Decl. Nordrehaug, ¶ 24.

14 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
15 to obtain a certified class and maintain the certified class through trial, and thereby not recover on
16 behalf of any employees other than herself. At the time of the mediation, Defendant forcefully opposed
17 the propriety of class certification, arguing that individual issues precluded class certification. Further,
18 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
19 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
20 class has been certified. While other cases have approved class certification in wage and hour claims,
21 class certification in this action was hotly disputed and the maintenance of a certified class through trial
22 was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

23 After arm's length negotiations between experienced and informed counsel, the Parties
24 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
25 \$1,073,025. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

26 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
27 and likely duration of further litigation likewise favors the settlement. Regardless of
28 how this Court might have ruled on the merits of the legal issues, the losing party likely
would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be

1 considered in evaluating the reasonableness of [a] settlement.’”
2 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
3 (9th Cir. 2000)).

4 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
5 **Class Representatives or Segments Of The Class**

6 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
7 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
8 Members are all determined under a neutral methodology. Each Participating Class Member will
9 receive the same opportunity to participate in and receive payment through a neutral formula that is
10 based upon the Workweeks for that individual. Decl. Nordrehaug, ¶4.

11 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
12 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
13 performed their duties admirably by working with Class Counsel for over three years, responding to
14 discovery and appearing for deposition. The Declarations of the Plaintiffs are submitted herewith in
15 support. Decl. Nordrehaug at ¶27. At this stage, the requested service award of \$10,000 is well within
16 the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps.*
17 *(U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class
18 member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698
19 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie*
20 *v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding
21 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007
22 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007) (awarding \$25,000 service award in overtime class action
23 and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded
24 to class representatives to compensate the employees for the time and effort expended on the case, for
25 the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an
26 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

27 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
28 **Preliminary Approval Of The Settlement**

The stage of the proceedings at which this Settlement was reached also militates in favor of

1 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
2 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
3 Members' claims before the Action were filed, and during the course of litigation, Class Counsel
4 performed extensive discovery and took depositions of the Defendant. At the time the settlement was
5 reached, the motion for class certification had been briefed and was pending. Class Counsel conducted
6 a review and analysis of all the relevant documents and data. Class Counsel was also experienced with
7 the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions.
8 Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information
9 to make an informed judgment regarding the likelihood of success on the merits and the results that
10 could be obtained through further litigation. Decl. Nordrehaug at ¶28.

11 Based on the foregoing data and their own independent investigation and evaluation, Class
12 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
13 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
14 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
15 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
16 parties possessed sufficient information to make an informed judgment regarding the likelihood of
17 success on the merits and the results that could be obtained through further litigation. Decl.
18 Nordrehaug at ¶29.

19 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

20 Plaintiffs contend that the proposed settlement meet all of the requirements for class
21 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
22 Court may appropriately approve the Class as defined in the Agreement. This Court should
23 conditionally certify the Class for settlement purposes only which consists of “the Wage and Hour
24 Class and the Background Check Class.” (Agreement at ¶ 1.9.) This Court should conditionally certify
25 the Wage and Hour Class for settlement purposes only, defined as follows:

26 All individuals who are or previously were employed by Defendant in California and
27 classified as a nonexempt employee at any time during the Wage and Hour Class Period.
28 (Agreement at ¶ 1.53.)

1 The Wage and Hour Class Period is May 11, 2016 through February 21, 2023. (Agreement at ¶ 1.55.)
2 This Court should also conditionally certify the Background Check Class for settlement purposes only,
3 defined as follows:

4 All individuals who executed Defendant's background check disclosure form at any time
5 during the Background Check Class Period.

6 (Agreement at ¶ 1.5.)

7 The Background Check Class Period is May 11, 2013 through February 21, 2023. (Agreement at ¶ 1.8.)

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

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

12 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
13 of a common or general interest, of many persons, or when the parties are numerous,
14 and it is impracticable to bring them all before the court...” The party seeking
15 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.

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

17 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
18 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
19 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
20 settlement only. (Agreement at ¶ 2.16.)

21 **B. The Proposed Class Is Ascertainable and Numerous**

22 Plaintiffs bring this action on behalf of a Class of hourly, non-exempt employees of Defendant
23 during the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
24 members can readily be determined through examination of Defendant’s files. Given that the Class
25 consists of 1,395 Wage and Hour Class Members and 1,978 Background Check Class Members,
26 Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574
27 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926,
28 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the

1 1,395 current and former employees that comprise the Wage and Hour Class and the 1,978 individuals
2 in the Background Check Class can be identified based on Defendant's records and are sufficiently
3 numerous for class certification. Decl. Nordrehaug at ¶30.

4 **C. Common Issues of Law and Fact Predominate**

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

10 Commonality exists if there is a predominant common legal question regarding how an
11 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
12 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
13 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
14 certification stage since the question is "essentially a procedural one that does not ask whether an action
15 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

16 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
17 common questions of whether Defendant's employment practices were lawful, whether Defendant
18 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
19 compensated for all hours worked, whether Defendant failed to provide required expense
20 reimbursement, whether Defendant violated the FCRA in performing background checks, and whether
21 Class Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend
22 that certification of this Class is appropriate because Defendant allegedly engaged in uniform practices
23 with respect to the Class Members. As a result, these common questions of liability could be answered
24 on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate
25 but will not oppose such a finding for purposes of this Settlement only.

26 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

27 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class
28 have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims

1 of the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v.*
2 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon*, *supra*, 150 F.3d at 1020, the Ninth
3 Circuit held that “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are
4 reasonably coextensive with those of absent class members; they need not be substantially identical.”

5 In the instant case, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs,
6 like every other member of the Class, were employed by Defendant as a non-exempt employee, and,
7 like every other member of the Class, were subject to the same employment practices. Plaintiffs, like
8 every other member of the Class, also claim owed compensation as a result of the Defendant’s uniform
9 company policies and practices. They also contend that Plaintiffs received the same background check
10 disclosure and as every other member of the Background Check Class. Thus, the claims of Plaintiffs
11 and the members of the Class arise from the same course of conduct by Defendant, involve the same
12 issues, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement,
13 Plaintiffs assert that the typicality requirement is met as to the common issues presented in this case.
14 Defendant does not oppose a finding of typicality for purposes of this Settlement only.

15 **E. The Class Representation Fairly and Adequately Protected the Class**

16 Plaintiffs contend that the Class Members are adequately represented here because Plaintiff and
17 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
18 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
19 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
20 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
21 Class Counsel, provided documents and information to Class Counsel, appeared for deposition, and
22 participated in the investigation and resolution of the Action. The personal involvement of the
23 Plaintiffs was essential to the prosecution of the Action and the monetary settlement reached. Second,
24 Plaintiffs retained competent counsel who are experienced in employment class actions and who have
25 no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
26 Plaintiff and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief under
27 the same set of facts and legal theories. Under such circumstances, there can be no conflicts of interest,
28 and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23

(C.D. Cal. 2020). Defendants dispute that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

F. The Superiority Requirement Is Met

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

Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. “It would be 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).

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 8.4(b).)

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the

1 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
2 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
3 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service award
4 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

5 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
6 the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to
7 submit a written objection. (Agreement at ¶¶ 1.51, 8.5, 8.7.) The Response Deadline will be extended
8 by 14 days in the event of a re-mailing. (Agreement at ¶ 1.51.) Class Members shall be given the
9 opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear
10 at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and
11 proper request to opt-out will automatically receive a payment of their Individual Class Payment. This
12 notice program was designed to meaningfully reach the Class Members and it advises them of all
13 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
14 distribution of the Class Notice satisfies the requirements of due process and is the best notice
15 practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

16 VII. CONCLUSION

17 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
18 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
19 approval hearing in October, 2023, which is at least one hundred twenty (120) days from the date of
20 Preliminary Approval.

21 Dated: April 28, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug, Esq.
24 Attorney for Plaintiffs