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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 DAVID ETTEDGUI, an individual,
15 on behalf of himself and on behalf of
16 all persons similarly situated,

17 Plaintiff,

18 vs.

19 WB STUDIO ENTERPRISES INC.,
20 a corporation; and DOES 1 through
21 50, inclusive,

22 Defendants.

CASE No. **2:20-cv-08053-MCS-(JDEx)**

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

Hearing Date: November 8, 2021
Hearing Time: 9:00 a.m.

District Judge: Hon. Mark C. Scarsi
First Street Courthouse
Courtroom 7C

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1 **Statutes:**

2 Fed. R. Civ. Proc. 23 *passim*

3
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5 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) 7, 25

6 *Manual for Complex Litigation* 7, 8, 25

1 **I. INTRODUCTION**

2 Plaintiff David Ettedgui (“Plaintiff”) and Defendant WB Studio Enterprises Inc.
3 (“Defendant”) have reached a full and final settlement of the above-captioned class
4 action, which is set forth in the Class Action Settlement Agreement (“Agreement”) filed
5 concurrently with the Court as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
6 Nordrehaug”).¹ By this motion, Plaintiff seeks preliminary approval of the Agreement
7 as fair, reasonable, and adequate, entry of the Preliminary Approval Order submitted
8 herewith, and scheduling of the Final Approval Hearing to determine final approval of
9 the Settlement.

10 **II. SUMMARY OF THE SETTLEMENT**

11 Counsel for Plaintiff and Defendant (collectively the “Parties”), after litigation and
12 contentious settlement negotiations, agreed to a settlement that is fair, reasonable, and
13 favorable to the Class, which is defined as “all individuals who worked for Defendant
14 in California as non-exempt employees who were Tour Guides/Floaters as at any time
15 during the Class Period.” (Agreement at ¶ I(C).) Decl. Nordrehaug, ¶3.

16 Under the terms to which the Parties have agreed, Defendant agrees to pay Seven
17 Hundred Twenty Thousand Dollars (\$720,000) (the “Gross Settlement Amount”) with
18 no reversion in consideration for the settlement and the release of claims as described in
19 the Agreement. (Agreement at ¶ I(T).) Decl. Nordrehaug, ¶4. This is an all-in
20 Settlement with no reversion of any portion of the Gross Settlement Amount to
21 Defendant, and no claim form is required to be paid. (Agreement at ¶ I(T).) Class
22 Members who do not opt-out of the Class by timely submitting an opt-out request shall
23 be automatically paid their share of the Net Settlement Amount. (Agreement at ¶ III(D).)
24 Decl. Nordrehaug, ¶5.

25 This is an excellent result for Class Members and Aggrieved Employees. The
26 litigation risks that the Plaintiff, Class Members, and Aggrieved Employees face if the
27

28 ¹ Capitalized terms have the same meaning as in the Agreement.

1 case were not settled include, among other things, an adverse decision on contested class
2 certification and manageability, an adverse decision on the merits, loss of motions which
3 would result in limiting any exposure, the possibility that a trial would return a less
4 favorable verdict, and possible appellate review. Liability in this case was uncertain
5 because the trier of fact, may have found that some or all of the Class Members and
6 Aggrieved Employees were properly compensated and/or that Defendant complied with
7 applicable law. Class Counsel and Plaintiff wish to avoid these risks and uncertainties,
8 as well as the consumption of time and resources of litigation, through settlement
9 pursuant to the terms and conditions of the Agreement, which was reached through arm's
10 length negotiations before Jeffrey Krivis, an experienced mediator of employment class
11 actions. Decl. Nordrehaug, ¶6.

12 **III. NATURE OF THE CASE**

13 The procedural history is set forth at length in the accompanying Declaration of
14 Nordrehaug at paragraphs 7 through 12, and is summarized below. Plaintiff initially
15 filed the Class Action against Defendant in the Superior Court of California, Los
16 Angeles County, and then also filed a separate PAGA Action against Defendant in the
17 same Court based on the same factual allegations. Decl. Nordrehaug, ¶¶ 7-8. The Class
18 Action was removed to federal court. Decl. Nordrehaug, ¶9. On December 28, 2020, the
19 United States District Court, Central District of California granted in part and denied in
20 part Defendant's Motion to Dismiss Plaintiff's First Amended Complaint without leave
21 to amend. [Doc. No. 35]. As part of this Settlement, Plaintiff filed a Second Amended
22 Complaint to add the PAGA claim from the State Court PAGA Action to this Action.
23 [Doc. No. 67]. Decl. Nordrehaug, ¶9.

24 Class Counsel conducted significant discovery, research and investigation in
25 furtherance of the prosecution of the Action. This discovery, investigation, research and
26 prosecution included, among other things, (a) formal discovery and multiple conferences
27 between counsel; (b) inspection and analysis of hundreds of pages of documents and
28 other information produced by Plaintiff and Defendant formally during the litigation of

1 the Action and informally in preparation for mediation (including class data); (c) analysis
2 of the numerous legal positions taken by Defendant; (d) investigation into the viability
3 of class treatment of the claims; (e) analysis of potential class-wide damages, including
4 reviewing class data, and analyzing information sufficient to understand Defendant's
5 potential defenses; (f) research of the applicable law with respect to the claims asserted
6 as well as potential defenses; and (g) assembling and analyzing extensive data and
7 information for calculating damages. Decl. Nordrehaug, ¶10.

8 Class Counsel has extensive experience in litigating wage and hour class actions
9 and PAGA actions in California and has thoroughly analyzed the value of the claims
10 during the prosecution of this Action. See Decl. Nordrehaug, ¶11. Following the
11 extensive investigation by both Parties, the Parties agreed to engage in private mediation.
12 The Parties attended an all-day mediation on April 28, 2021 before Jeffrey Krivis, a
13 respected and experienced mediator. At all times, the Parties' settlement negotiations
14 have been non-collusive, adversarial, and at arm's length. The Parties agreed on the
15 basic terms of a class and PAGA settlement pursuant to a Memorandum of
16 Understanding executed following the mediation, ongoing post-mediation discussions
17 and a mediator's proposal. The Parties then negotiated the final Agreement now
18 submitted for this Court's consideration. Decl. Nordrehaug, ¶12.

19 **IV. THE SETTLEMENT TERMS AND PLAN OF ALLOCATION**

20 **A. The Gross Settlement Amount**

21 To implement the terms of this Settlement, Defendant agrees to pay the Gross
22 Settlement Amount of Seven Hundred Twenty Thousand Dollars (\$720,000) in full and
23 complete satisfaction of the Class Members' Released Claims. (Agreement at ¶ III(B).)
24 The Gross Settlement Amount consists of all payments to Class Members from the Net
25 Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all
26 attorneys' fees and costs, (c) a service award to the Plaintiff, and (d) the PAGA Payment
27 to the LWDA and the Aggrieved Employees. (Agreement at ¶ III(C)-(D).) The amount
28 remaining in the Gross Settlement Amount after the deduction of Court-approved

1 amounts for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
2 the Class Representative Service Payment, the PAGA Payment, and the Settlement
3 Administration Expenses (called the “Net Settlement Amount”) shall be allocated to
4 Class Members as their Settlement Shares. (Agreement at ¶¶ I(V) and III(D).) Decl.
5 Nordrehaug, ¶13.

6 **B. Settlement Shares**

7 From the Net Settlement Amount, the Settlement Share for each Participating
8 Class Member will be calculated by (a) dividing the Net Settlement Amount by the total
9 number of workweeks worked by the Participating Class Members while Defendant's
10 Studio Tour was running and operational during the Class Period to determine a dollar
11 amount per week ("Weekly Rate"), and (b) multiplying the total number of workweeks
12 worked by each Participating Class Member while Defendant's Studio Tour was running
13 and operational during the Class Period by the Weekly Rate. (Agreement at ¶ III(D)(2).)
14 Decl. Nordrehaug, ¶14.

15 Within thirty (30) days of the Effective Date, Defendant shall transfer the Gross
16 Settlement Amount to the Settlement Administrator. (Agreement at ¶ III(F)(11).)
17 Thereafter, the distribution of Settlement Shares to Participating Class Members shall
18 be made by the Settlement Administrator within fifteen (15) days after Defendant funds
19 the Gross Settlement Amount. (Agreement at ¶ III(F)(11).) Checks issued shall remain
20 valid and negotiable for one hundred eighty (180) days, and any unclaimed funds will
21 be paid to the California Controller's Unclaimed Property Fund in the name of and for
22 the benefit of the individual who did not cash their check. (Agreement at ¶ III(F)(12).)
23 Decl. Nordrehaug, ¶15.

24 **C. Scope of the Release of Class Claims**

25 The scope of the release by all Class Members who do not opt out tracks the scope
26 of the allegations in the Action. Upon the Effective Date and full funding, all
27 Participating Class Members shall irrevocably release the following claims against
28 Defendant and the Released Parties:

1 any and all claims, liabilities, rights, demands, suits, matters, obligations,
2 liens, damages, losses, costs, expenses, debts, actions, and causes of action,
3 of every kind and/or nature whatsoever, which any Participating Class
4 Member now has or at any time ever had against any of the Released
5 Parties that is alleged in the operative Complaint or that could have been
6 alleged based on the facts alleged in the operative Complaint, including: (a)
7 meal period penalties allegedly owed to the Participating Class Members
8 by Defendant during the Class Period; (b) rest period penalties allegedly
9 owed to the Participating Class Members by Defendant during the Class
10 Period; (c) violation or alleged violation of California Labor Code Sections
11 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial
12 Commission Wage Order or other statute or regulation regarding meal and
13 rest periods; (d) attorneys' fees due or allegedly due under California Labor
14 Code or any other statute, regulation, or contractual provision providing for
15 such fees in connection with the operative Complaint; and (e) penalties or
other payments which are based on any of the foregoing, including
penalties, premiums, or payments under California Labor Code Sections
201, 202, 203, 226, 226.7, 512, and 2802 and/or any violation of the
California Industrial Commission Wage Order alleged in the operative
Complaint ("Released Class Claims"). Without in any way limiting the
foregoing, the Released Class Claims shall include all claims, liabilities,
rights, demands, suits, matters, obligations, liens, damages, losses, costs,
expenses, debts, actions, and causes of action under statutes and regulations
set forth in this Section G.1., whether enforced directly or pursuant to
California Labor Code Section 2699, California Business and Professions
Code Section 17200, et seq., or any other mechanism. The Released Class
Claims do not include claims for vested benefits, wrongful termination,
unemployment insurance, disability, social security, workers'
compensation, and claims outside of the Class Period.

16 (Agreement at ¶ III(G)(1).) Decl. Nordrehaug, ¶16.

17 **D. PAGA**

18 Subject to Court approval, \$20,000 of Gross Settlement Amount will be allocated
19 to PAGA, of which 75% (\$15,000) shall be allocated to the Labor Workforce
20 Development Agency ("LWDA") as its share of the civil penalties and 25% (\$5,000) will
21 be distributed to the Aggrieved Employees based on the number of workweeks worked
22 while Defendant's Studio Tour was running and operational during the PAGA Period.

23 (Agreement at III(C)(3) and Paragraph III(D)(5).) Decl. Nordrehaug, ¶ 17.

24 **E. Scope of the Release of the PAGA Claims**

25 The scope of the release by all Aggrieved Employees tracks the scope of the
26 allegations in the Action. Upon the Effective Date and full funding, all Aggrieved
27 Employees shall irrevocably release the following claims against Defendant and the
28 Released Parties:

1 any and all PAGA claims for civil penalties pled in the operative Complaint
2 or in the Class Representative's letter to the LWDA, dated February 17,
3 2020, which arose during the PAGA Period or could have been alleged
4 based on the factual allegations contained in the operative Complaint or the
5 letters sent by Plaintiff that occurred during the PAGA Period as to the
6 Aggrieved Employees, including: (a) PAGA claims predicated on meal
7 period penalties allegedly owed to the Aggrieved Employees by Defendant
8 during the PAGA Period; (b) PAGA claims predicated on rest period
9 penalties allegedly owed to the Aggrieved Employees by Defendant during
10 the PAGA Period; (c) PAGA claims predicated on violation or alleged
11 violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512,
12 and 2802 and/or any California Industrial Commission Wage Order or other
statute or regulation regarding meal and rest periods; (d) attorneys' fees due
or allegedly due under PAGA in connection with the operative Complaint;
and (e) PAGA penalties which are based on any of the foregoing, including
PAGA penalties predicated on penalties, premiums, or payments allegedly
due under California Labor Code Sections 201, 202, 203, 226, 226.7, 512,
and 2802 and/or any California Industrial Commission Wage Order.
("Released PAGA Claims"). The Released PAGA Claims exclude any
PAGA claims outside the PAGA Period. The release of the Released PAGA
Claims shall be effective as to all Aggrieved Employees, regardless of
whether an Aggrieved Employee submitted a request for an exclusion from
the Class.

13 (Agreement at ¶ III(G)(2).) Decl. Nordrehaug, ¶ 18.

14 **F. Settlement Administration**

15 Subject to Court approval, the Parties have agreed on Simpluris to administer the
16 settlement in this action ("Settlement Administrator"). (Agreement at ¶ III(E).) The
17 Settlement Administrator will be paid for administration in an amount not to exceed
18 \$20,000. (Agreement at ¶ III(C)(4).) Decl. Nordrehaug, ¶19.

19 **E. Payments to the Plaintiff and Class Counsel**

20 Class Counsel will apply to the Court for an award of reasonable attorneys' fees
21 in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for
22 reimbursement of reasonable expenses in an amount not to exceed \$20,000, subject to
23 Court approval. (Agreement at ¶ III(C)(2). Plaintiff will also apply for Court approval
24 of a service award in an amount not to exceed \$10,000. (Agreement at ¶ III(C)(1).)
25 Decl. Nordrehaug, ¶20.

26 **V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR** 27 **PRELIMINARY APPROVAL**

28 When a proposed class-wide settlement is reached, the settlement must be

1 submitted to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A.
2 Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. The Ninth Circuit
3 has declared that a strong judicial policy favors settlement of class actions. *Class*
4 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

5 Preliminary approval is the first of three steps that comprise the approval
6 procedure for settlements of class actions. See e.g. *Louie v. Kaiser Found. Health Plan,*
7 *Inc.*, 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008). The second step is the
8 dissemination of notice of the settlement to all class members. The third step is a final
9 settlement approval hearing to determine the fairness, adequacy, and reasonableness of
10 the settlement and when class members may be heard regarding the settlement. See
11 *Manual for Complex Litigation*, Second §30.44 (1993).

12 The question presented on a motion for preliminary approval of a proposed class
13 action settlement is whether the proposed settlement is "within the range of possible
14 approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*,
15 690 F.2d 616, 621 n.3 (7th Cir. 1982); *Louie, supra*, at *7. Preliminary approval is
16 merely the prerequisite to giving notice so that "the proposed settlement . . . may be
17 submitted to members of the prospective Class for their acceptance or rejection." *Phila.*
18 *Housing Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D.
19 Pa. 1970). There is an initial presumption of fairness when a proposed settlement, which
20 was negotiated at arm's length by Class Counsel, is presented for court approval.
21 *Newberg*, 3d Ed., §11.41, p.11-88. The ultimate question of whether the proposed
22 settlement is fair, reasonable and adequate is made after notice of the settlement is given
23 to the class members and a final settlement hearing is held by the Court.

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

26 "The parties must provide the court with information sufficient to enable it to
27 determine whether to give notice of the propos[ed] [settlement] to the class." Fed. R.
28 Civ. P., rule 23(e)(1)(A). The approval of a proposed settlement of a class action suit is

1 a matter within the broad discretion of the trial court. *Stanton v. Boeing*, 327 F.3d 938,
2 959 (9th Cir. 2003). Preliminary approval does not require the trial court to answer the
3 ultimate question of whether a proposed settlement is “fair, reasonable and adequate.”
4 *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Manual for Complex*
5 *Litigation*, Third, §§ 20.212. At final approval of a settlement, a court is to balance
6 several factors, including: “[i] the strength of the plaintiffs’ case; [ii] the risk, expense,
7 complexity, and likely duration of further litigation [and] the risk of maintaining class
8 action status throughout the trial; [iii] the amount offered in settlement; [iv] the extent
9 of discovery completed and the stage of the proceedings; [and] [v] the experience and
10 views of counsel” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

11 In considering a potential settlement for preliminary approval purposes, the trial
12 court does not have to reach any ultimate conclusions on the issues of fact and law which
13 underlie the merits of the dispute, and need not engage in a trial on the merits. *Officers*
14 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir. 1982), cert. denied, 459 U.S.
15 1217 (1983). The question of whether a proposed settlement is fair, reasonable and
16 adequate necessarily requires a judgment and evaluation by the attorneys for the parties
17 based upon a comparison of “the terms of the compromise with the likely rewards of
18 litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
19 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
20 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts
21 recognize that the opinion of experienced counsel supporting the settlement is entitled
22 to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
23 *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d
24 at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
25 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985).

26 **B. Factors To Be Considered In Granting Preliminary Approval**

27 A number of factors are to be considered in evaluating a settlement for purposes
28 of preliminary approval. No one factor should be determinative, but rather all factors

1 should be considered. “If the proposed settlement appears to be the product of serious,
2 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
3 grant 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 the notice be
5 given to the class members of a formal fairness hearing.” *In re Tableware Antitrust*
6 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2011). To make this determination, the
7 Court must consider the following factors:

- 8 (A) the class representative and class counsel have adequately represented
the class;
- 9 (B) the proposal was negotiated at arm’s length;
- 10 (C) the relief provided for the class is adequate, taking into account:
 - 11 (i) the costs, risks, and delay of trial and appeal;
 - 12 (ii) the effectiveness of any proposed method of distributing relief to
the class, including the method of processing class-member claims;
 - 13 (iii) the terms of any proposed award of attorneys’ fees, including
timing of payment; and
 - 14 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 15 (D) the proposal treats class members equitably relative to each other.

16 Fed. R. Civ. P. 23(e)(2).

17 Courts also examine the *Hanlon* factors in addition to conducting a
18 range-of-reasonableness analysis at the preliminary stage, reasoning it is better to closely
19 scrutinize the settlement terms at the earliest opportunity so that if a fatal flaw exists, it
20 can be addressed before the parties "waste a great deal of time and money in the notice
21 and opt-out process." *Millan v. Cascade Water Services, Inc.*, 310 F.R.D. 593 (E.D. Cal.
22 2015). Here, the settlement satisfies all of these criteria.

23 **1. The Class Representatives and Class Counsel Have Adequately 24 Represented the Class**

25 The proposed Class Representative and Class Counsel have more than adequately
26 represented the Class Members and Aggrieved Employees. The Parties scheduled a
27 private mediation to take place before Jeffrey Krivis, Esq., a respected and experienced
28 mediator for class actions and wage and hour lawsuits (the “Mediator”). (Decl.
Nordrehaug, ¶ 12.) Prior to mediation, Defendant provided to Plaintiff and Class
Counsel payroll and employment data and other information regarding the Class

1 Members and Aggrieved Employees, various internal documents, and other
2 compensation and employment-related materials. (Decl. Nordrehaug, ¶ 10.) Class
3 Counsel analyzed the data with the assistance of damages expert Berger Consulting and
4 prepared and submitted a mediation brief to the Mediator. (Decl. Nordrehaug, ¶¶ 22-24.)
5 Class Counsel is experienced with these class and PAGA claims and has settled similar
6 claims on behalf of employees. (Decl. Nordrehaug, ¶31.) Most importantly, Plaintiff
7 and Class Counsel believe that this settlement is fair, reasonable and adequate and in the
8 best interests of the Class Members and Aggrieved Employees.

9 **2. The Settlement Was Reached Through Arm's Length Negotiations and**
10 **Is the Product of Serious, Informed and Noncollusive Negotiations**

11 This settlement is the result of extensive and hard fought negotiations. Defendant
12 denies each and every one of the claims and contentions alleged in this Action.
13 Defendant has asserted and continues to assert many defenses thereto, and has expressly
14 denied and continues to deny any wrongdoing or legal liability arising out of the conduct
15 alleged in the Action. Settlement negotiations took place between experienced counsel.
16 Counsel for the Parties engaged in formal mediation and settlement negotiations and
17 because the Parties were unable to reach a settlement on the day of the mediation, had
18 ongoing negotiations post-mediation. Only after extensive, noncollusive negotiations,
19 the Parties reached an agreement based on a mediator's proposal, the experience of
20 counsel, and the uncertainties of protracted litigation. Importantly, Plaintiff and Class
21 Counsel believe that this settlement is fair, reasonable and adequate. Decl. Nordrehaug,
22 ¶21.

23 Class Counsel has conducted a thorough investigation into the facts of the class
24 and PAGA action, including a review of relevant documents and data and a diligent
25 investigation of the Class Members' and Aggrieved Employees' claims against
26 Defendant. Class Counsel also retained an expert to prepare a damage valuation for use
27 in the mediation and negotiations. Decl. Nordrehaug, ¶22.

28 Plaintiff and Class Counsel recognize the expense and length of continuing to

1 litigate and trying this Action against Defendant through possible appeals, which could
2 take several years, and are also mindful of and recognize the inherent problems of proof
3 under, and alleged defenses to, the claims asserted in the Action. Based on the foregoing
4 documents and data, and their own independent investigation and evaluation, Class
5 Counsel is of the opinion that the settlement with Defendant for the consideration and
6 on the terms set forth in the Settlement is fair, reasonable, and adequate in light of all
7 known facts and circumstances, including the risk of significant delay, defenses asserted
8 by Defendant, and potential appellate issues. Decl. Nordrehaug, ¶ 23.

9 Here, the negotiations have been hard-fought and aggressive with capable
10 advocacy on both sides. Accordingly, "[t]here is likewise every reason to conclude that
11 settlement negotiations were vigorously conducted at arms' length and without any
12 suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*,
13 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

14 **3. The Relief Provided For The Class Is More Than Adequate in Light of**
15 **Value of the Claims, Similar Settlements, and the Risks of Continued**
Litigation

16 The proposed Settlement herein has no "obvious deficiencies" and is well within
17 the range of possible approval. All Class Members will receive an opportunity to
18 participate in and receive payment according to the same formula. The Gross Settlement
19 Amount provides an average value of \$1,139 per Class Member and \$22.50 per
20 workweek, and after deductions, the Net Settlement Amount provides an average
21 recovery of \$648 per Class Member and \$12.81 per work week. Decl. Nordrehaug, ¶24.

22 In advance of negotiations, Class Counsel received class data concerning
23 employment and payroll information, which permitted Class Counsel to make an
24 intelligent evaluation. The calculations to compensate for the amount due for the Class
25 at the time of the mediation were calculated by Berger Consulting, Plaintiff's damage
26 expert. Decl. Nordrehaug, ¶24.

27 As to the Class whose claims are at issue in this Action, Plaintiff used an expert
28 (Berger Consulting) to analyze the data and determine the potential unpaid wages for the

1 employees. The maximum potential damages were calculated to be \$462,778 for meal
2 periods at a 28% violation rate after accounting for meal period premiums paid to the
3 Class, \$1,686,796 for rest period damages at a 100% violation rate based upon an
4 Plaintiff's on-duty rest period theory, and this Court's Order [Doc. No. 35] dismissed the
5 claims for minimum wages and overtime. Decl. Nordrehaug, ¶24. As a result, the total
6 damage valuation was therefore calculated that Defendant was subject to a maximum
7 damage claim in the amount of \$2,149,574. As to potential penalties, Plaintiff
8 calculated that wage statement penalties were a maximum of \$875,150 and potential
9 waiting time penalties were \$1,656,474, however, these wage statement and waiting time
10 penalties claims potentially have a much smaller value, even if damages were awarded,
11 to the extent that they are only derivative of the meal and rest break claims.² Decl.
12 Nordrehaug, ¶24. (Defendant vigorously disputed Plaintiff's calculations and exposure
13 theories.)

14 Consequently, the Gross Settlement Amount of \$720,000 represents more than
15 33% of the value of the damages at issue in this case at the time this Settlement was
16 negotiated, assuming these amounts could be proven at trial. Given the amount of the
17 settlement as compared to the potential value of claims in this case and the defenses
18

19 _____
20 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code
21 Sections 203 and 226, Plaintiffs recognized that these claims were subject to various
22 defenses asserted by Defendant, including, but not limited to, a good faith dispute
23 defense as to whether any premium wages for meal or rest periods or other wages were
24 owed given Defendant's position that Plaintiff were properly compensated. See
25 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful
26 failure to pay wages if the employer and employee have a good faith dispute as to
27 whether and when the wages were due."). Additionally, Courts have held that violations
28 of the meal and rest period regulations, which require payment of a "premium wage" for
each improper meal period, do **not** give rise to claims under sections 203 and 226. See
Ling v. P.F. Chang's China Bisto, Inc., 245 Cal. App. 4th 1242, 1261 (2016) and
Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308, 1336 (2018). As a result,
the viability of Plaintiffs' claims on these theories is uncertain.

1 asserted by Defendant, this settlement is fair and reasonable.³ Decl. Nordrehaug, ¶24.

2 Where both sides face significant uncertainty, the attendant risks favor settlement.
3 *Hanlon, supra*, 150 F.3d at 1026. "Generally, unless the settlement is clearly inadequate,
4 its acceptance and approval are preferable to lengthy and expensive litigation with
5 uncertain results." *Ching v. Siemens Indus., Inc.*, 2014 U.S. Dist. LEXIS 89002, 2014
6 WL 2926210, at *4 (N.D. Cal. 2014).

7 Here, a number of defenses asserted by Defendant presented serious threats to the
8 claims of Plaintiff and the other Class Members and Aggrieved Employees. Defendant
9 contends that Defendant's employment practices complied with all applicable Labor
10 laws, including Wage Order 12-2001. Defendant further contends that federal law
11 preempts the meal period claims of Plaintiff, the Class Members and the Aggrieved
12 Employees because their right to meal penalties arises exclusively from and requires
13 interpretation and analysis of a collective bargaining agreement that was applicable to
14 their employment with Defendant. Defendant successfully convinced this Court that
15 claims for minimum wages and overtime were barred. Defendant also argued that the
16 California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
17 (2012), weakened Plaintiff's claims, on liability, value, class certifiability, and
18 manageability. Finally, several Courts have held that meal and rest period violations do
19 not give rise to wage statement or waiting time penalties. See e.g. *Ling v. P.F. Chang's*
20 *China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). If successful, Defendant's
21 defenses could eliminate or substantially reduce any recovery to the Class. While
22

23 ³ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007)
24 (approving a settlement where the settlement amount constituted approximately 25% of
25 the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*,
26 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where
27 "the proposed Total Settlement Amount represents approximately 10% of what class
28 might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego*
Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class
settlement which represented "roughly one-sixth of the potential recovery".)

1 Plaintiff believes that these defenses could be overcome, Defendant maintains these
2 defenses have merit and therefore present a serious risk to recovery for Plaintiff, the
3 Class Members, and the Aggrieved Employees. Decl. Nordrehaug at ¶25.

4 Moreover, there was also a significant risk that, if the Action was not settled,
5 Plaintiff would be unable to obtain class certification and maintain a certified class
6 through trial or demonstrate that his PAGA claim is manageable, and thereby not recover
7 on behalf of any employees other than themselves. At the time of the mediation,
8 Defendant forcefully opposed the propriety of class certification and the manageability
9 of Plaintiff's PAGA claim, arguing that individual issues precluded such findings.
10 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S.*
11 *Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for
12 a class-wide recovery even where the class has been certified. While other cases have
13 approved class certification in wage and hour claims, class certification in this action
14 would have been hotly disputed and was by no means a foregone conclusion. Decl.
15 Nordrehaug at ¶26.

16 Finally, the proposed method of distribution will be effective as payments will be
17 made automatically to every Participating Class Member and Aggrieved Employees,
18 without the need to submit a claim form. The Agreement sets forth all the terms of
19 Settlement, and there are no other agreements between the Parties that would need to be
20 identified under Rule 23(e)(3). Decl. Nordrehaug, ¶27.

21 After vigorous negotiations and recognizing the potential risks, the Parties agreed
22 to the settlement of \$720,000. As a federal district court held in *Glass*, where the parties
23 faced uncertainties similar to those here:

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

1 *Glass, supra*, 2007 U.S. Dist. LEXIS 8476, at *11-12.

2 Here, the risk of further litigation is substantial.

3 **4. The Settlement Does Not Improperly Grant Preferential Treatment To**
4 **The Class Representative or Segments of The Class**

5 The relief provided in the settlement will benefit all Class Members and
6 Aggrieved Employees equally. The settlement does not improperly grant preferential
7 treatment to the Class Representatives or any individual segments of the Class or
8 Aggrieved Employees. Each Class Member will be entitled to cash payment based on
9 the plan of allocation. The Settlement Share for each Participating Member in the
10 California Class will be determined based upon the weeks worked by that individual.
11 Decl. Nordrehaug at ¶14. The share of the PAGA Payment each Aggrieved Employee
12 receives will also be determined based upon the weeks worked by that individual.
13 Plaintiff will apply to the Court for a service award in consideration for his service and
14 for the risks undertaken on behalf of the Class Members and Aggrieved Employees.
15 Plaintiff performed his duties admirably by working with Class Counsel. See Decl.
16 Nordrehaug at ¶30. At this stage, the requested Plaintiff's service award is well within
17 the accepted range of awards for purposes of preliminary approval.⁴ The Declaration of
18 Nordrehaug at ¶34 provides a long list of courts across California and the Ninth Circuit
19 which have awarded service awards in the amount of \$10,000 or higher, thus establishing
20 that the requested service award in this matter is "within the range of reasonableness",

21 ⁴See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
22 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
23 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
24 (approving \$10,000 service award where class member recovery was \$375); *Louie v.*
25 *Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding
26 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
27 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award
28 in overtime class action and a pool of \$100,000 in enhancements). The payment of
service award to the named plaintiffs in a wage and hour class action is approved by
settled authority in the Ninth Circuit, and the requested amount of \$10,000 is reasonable
in light of the amount approved in the other decisions.

1 subject to a final determination by this Court at final approval.

2 Finally, there is no indication of any collusion or preferential treatment. The Ninth
3 Circuit in *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (2011)
4 identified three “subtle signs that class counsel have allowed pursuit of their own
5 self-interests ... to infect the negotiations:” “(1) when counsel receive a disproportionate
6 distribution of the settlement; (2) when the parties negotiate a 'clear sailing' arrangement
7 (i.e., an arrangement where defendant will not object to a certain fee request by class
8 counsel); and (3) when the parties create a reverter that returns unclaimed fees to the
9 defendant.” *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (quoting *Bluetooth*,
10 654 F.3d at 947). Here, the facts do not establish any collusion. Class Counsel’s
11 requested fee award is **less than the current lodestar** and is in line with awards in other
12 employment cases. See e.g. *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480
13 (2016); *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, *17 (N.D. Cal.
14 2009) (““nearly all common fund awards range around 30%””) (quoting *In re Activision*
15 *Sec. Litigation*, 723 F.Supp. 1373 (N.D. Cal. 1989)); *Ingalls v. Hallmark Mktg. Corp.*,
16 2009 U.S. Dist. LEXIS 131078 (C.D. Cal.2009) (awarding 33.33% fee on a \$5.6 million
17 wage and hour class action); *Birch v. Office Depot, Inc.*, 2007 U.S. Dist. LEXIS 102747
18 (S.D. Cal. 2007) (awarding a 40% fee on a \$16 million wage and hour class action);
19 *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. 2006) (awarding
20 a 40% fee on a \$3.75 million wage and hour class action); *Stuart v. Radioshack Corp.*,
21 2010 U.S. Dist. LEXIS 92067, *15-18 (N.D. Cal. 2010) (awarding attorneys’ fees
22 amounting to one-third of a \$4.5 million class settlement). Importantly, the Settlement
23 is entirely non-reversionary. The absence of any sign of collusion and the arm’s length
24 negotiations before an experienced mediator all support the approval of the Settlement.

25 **5. The Hanlon Factors Also Support the Settlement**

26 a. The Strength of Plaintiff’s Case

27 The Court should “evaluate objectively the strengths and weaknesses inherent in
28 the litigation and the impact of those considerations on the parties' decisions to reach

1 these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 975 (E.D. Cal.
2 2012) (citation omitted). In so doing, however, the Court does “not reach ‘any
3 conclusions regarding the contested issues of fact and law that underlie the merits of
4 th[e] litigation.’” *Brewer v. Salyer*, 2017 U.S. Dist. LEXIS 101374, 2017 WL 2813178,
5 at *3 (E.D. Cal. 2017).

6 Here, Defendant denies all allegations of wrongdoing and allege numerous
7 affirmative defenses relating not only to Plaintiff’s claims, but also to class certification.
8 Defendant asserts facts that could negate essential elements of Plaintiff’s claims.
9 Defendant contends, for example, that its employees were able to take meal and rest
10 breaks. In addition, Defendant contends that federal law preempts the claims because
11 of the collective bargaining agreement. Further, there could be significant problems of
12 proof regarding the extent to which Class Members and Aggrieved Employees allegedly
13 missed meal and rest breaks during the Class Period. Decl. Nordrehaug at ¶25.
14 Plaintiff’s willingness to settle this action at a discount to the maximum estimated
15 recovery is not suspect or improvident in light of such considerations. This factor
16 weighs in favor of approval.

17 b. The Risk, Expense, Complexity and Likely Duration of Further
18 Litigation

19 Approval of settlement is “preferable to lengthy and expensive litigation with
20 uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529
21 (C.D. Cal. 2004). Moreover, “[e]mployment law class actions are, by their nature,
22 time-consuming and expensive to litigate.” *Aguilar v. Wawona Frozen Foods*, 2017 U.S.
23 Dist. LEXIS 76751, 2017 WL 2214936, at *3 (E.D. Cal 2017).

24 As discussed above, this Action involves multiple claims under state and federal
25 law, implicating several aspects of Defendant’s operations, including Defendant’s
26 payment of wages and the management of meal and rest breaks. Even assuming Plaintiff
27 could show that Defendant had unlawful policies and practices, Plaintiff would still have
28 to set forth evidence to establish the extent to which a given employee missed breaks and

1 was not paid wages. In addition to increasing the complexity, expense and duration of
2 this litigation, the accumulation of individualized issues would raise a risk of
3 decertification in these proceedings. This factor weighs in favor of approval.

4 c. The Amount Offered in Settlement

5 The amount offered in settlement is generally considered to be one of the most
6 important consideration of any class settlement. See *Kutzman v. Derrel's Mini Storage,*
7 *Inc.*, 2020 U.S. Dist. LEXIS 13314 (E.D. Cal. 2020). “Courts regularly approve class
8 settlements where class members recover less than one quarter of the maximum potential
9 recovery amount.” *Kutzman, supra*, 2020 U.S. Dist. LEXIS 13314, at *30.

10 As discussed above the settlement of \$720,000.00 represents more than 33% of
11 the value of the maximum damages at issue in this case at the time this Settlement was
12 negotiated, assuming these amounts could be proven at trial. This factor weighs heavily
13 in favor of approval. Decl. Nordrehaug, ¶24.

14 d. The Extent of Discovery Completed

15 Class Counsel has conducted a thorough investigation into the facts of the class
16 action. Plaintiff performed extensive written discovery and obtained a production of
17 documents from the Defendant. In advance of mediation, Defendant also provided
18 information necessary for Class Counsel to intelligently negotiate a settlement. Decl.
19 Nordrehaug at ¶28. Class Counsel engaged in a thorough review and analysis of the
20 relevant documents and data with the assistance of an expert, Berger Consulting.
21 Accordingly, the agreement to settle did not occur until Class Counsel possessed
22 sufficient information to make an informed judgment regarding the likelihood of success
23 on the merits and the results that could be obtained through further litigation. Decl.
24 Nordrehaug at ¶28.

25 Plaintiff engaged in a full investigation of the claims with the necessary data and
26 documentation. The Parties then engaged in an all-day mediation, conducted by a
27 mediator with experience in employment class actions, engaged in additional settlement
28 negotiations post-mediation, and agreed to settle this Action pursuant to the terms and

1 conditions of a proposal provided by the mediator. Based on the foregoing information
2 and data and their own independent investigation and evaluation, Class Counsel is of the
3 opinion that the settlement with Defendant for the consideration and on the terms set
4 forth in the Agreement is fair, reasonable, and adequate, and is in the best interest of the
5 Class Members and Aggrieved Employees in light of all known facts and circumstances,
6 including the risk of significant delay, defenses asserted by Defendant, and numerous
7 potential appellate issues. There can be no doubt that Counsel for the Parties possessed
8 sufficient information to make an informed judgment regarding the likelihood of success
9 on the merits and the results that could be obtained through further litigation. Decl.
10 Nordrehaug at ¶29.

11 In *Glass*, the Northern District of California recently granted final approval of an
12 overtime and meal wage action even though no formal discovery had been conducted
13 prior to the settlement:

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

17 2007 U.S. Dist. LEXIS 8476 at *14.

18 Unlike *Glass*, here the Parties did engage in formal discovery and document
19 production, as well as conduct independent investigations, interviews and due diligence
20 to confirm the accuracy of the information supplied by Defendant. Accordingly, Class
21 Counsel was in a far better position than counsel in *Glass* to evaluate the fairness of this
22 Settlement.

23 **VI. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT** 24 **PURPOSES**

25 The proposed settlement meets all of the requirements for certifying a settlement
26 class under Fed. R. Civ. Proc. 23(b)(2), and therefore, the Court may appropriately
27 approve the Class as defined in the Agreement. For purposes of settlement only, this
28 Court should conditionally certify the Class defined as "all individuals who worked for

1 Defendant in California as non-exempt employees who were Tour Guides/Floaters as at
2 any time during the Class Period.” (Agreement at ¶ I(C).)

3 **A. Rule 23 Of The Federal Rules Of Civil Procedure**

4 Plaintiff seeks certification of this action for settlement purposes under Federal
5 Rules of Civil Procedure 23(b)(3). This portion of Rule 23 applies to class actions where
6 "the court finds that the questions of law or fact common to the members of the class
7 predominate over any questions affecting only individual members, and that a class
8 action is superior to other available methods for the fair and efficient adjudication of the
9 controversy." Fed. R. Civ. Proc. 23(b)(3).

10 To maintain a class action under Rule 23(b)(3), the four prerequisites of Federal
11 Rules of Civil Procedure 23(a) must first be satisfied. These prerequisites are referred
12 to as numerosity, commonality, typicality, and adequacy of representation, and are set
13 forth in Rule 23(a) as follows:

- 14 (1) the class is so numerous that joinder of all members is impracticable,
15 (2) there are questions of law or fact common to the class,
16 (3) the claims or defenses of the representative parties are typical of the
17 claims or defenses of the class, and
18 (4) the representative parties will fairly and adequately protect the
19 interests of the class.

20 The Parties agree that, for purposes of settlement only, these requirements may be
21 satisfied in this case, and therefore, the proposed Class should be certified for purposes
22 of settlement only.

23 **B. The Numerosity Requirement Is Satisfied**

24 Rule 23(a) merely requires that the class be "so numerous that joinder of all
25 members is impracticable." Fed. R. Civ. Proc. 23(a). "Courts have routinely found the
26 numerosity requirement satisfied when the class comprises 40 or more members."
27 *EEOC v. Kovacevich "5" Farms*, 2007 U.S. Dist. LEXIS 32330 at *57 (E.D. Cal. 2007);
28 see also *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *Ansari v. New*
York Univ., 179 F.R.D. 112, 114 (S.D.N.Y. 1998). Here, the Class is composed of
approximately 632 individuals in the Class, which Plaintiff contends is sufficiently

1 numerous for settlement purposes. Decl. Nordrehaug at ¶30.

2 **C. Common Questions Of Law And Fact Bind The Class**

3 Rule 23(a) requires that there be a common question of law or fact. Rule 23(a) is
4 satisfied where "the course or conduct giving rise to the cause of action affects all class
5 members, and at least one of the elements of that cause of action is shared by all of the
6 class members." *Lockwood Motors, Inc. v. General Motors Corp.*, 162 F.R.D. 569, 575
7 (D. Minn. 1995). This requirement is met if common questions of liability are present,
8 even if there may be individual variations. *Hanlon, supra*, 150 F.3d at 1019; *Kurihara*
9 *v. Best Buy Co.*, 2007 U.S. Dist. LEXIS 64224, *17 (N.D. Cal. 2007).

10 Here, Plaintiff contends that common questions of law and fact are present,
11 specifically the common questions of whether Defendant's employment practices were
12 lawful, whether Defendant failed to properly provide and/or pay for meal and rest
13 periods, whether the meal period claims are preempted by federal law because of the
14 applicable collective bargaining agreement, whether Defendant's conduct was willful,
15 and whether the Class is entitled to compensation and related penalties. Plaintiff
16 contends that certification of this Class is appropriate because Defendant purportedly
17 engaged in uniform practices with respect to the Class Members. As a result, these
18 common questions of liability could be answered on a class wide basis. Decl.
19 Nordrehaug at ¶30. While Defendant disputes that the commonality requirement may
20 be satisfied for purposes of litigation, Defendant does not oppose such a finding for
21 purposes of this Settlement only.

22 **D. The Plaintiff's Claims Are Typical Of The Class Claims**

23 The typicality requirement of Rule 23(a) requires that the members of the class
24 have the same or similar claims as the named plaintiff. "The typicality requirement is
25 met when the claims of the named plaintiff arise from the same event or are based on the
26 same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In
27 *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
28 "[u]nder the rule's permissive standards, representative claims are 'typical' if they are

1 reasonably coextensive with those of absent class members; they need not be
2 substantially identical." 150 F.3d at 1020. Typicality "does not mean that the claims of
3 the class representative[s] must be identical or substantially identical to those of the
4 absent class members." *Stanton, supra*, at 957.

5 In the instant case, Plaintiff contends that the typicality requirement is fully
6 satisfied. Plaintiff, like every other member of the Class, was employed by Defendant
7 as non-exempt employees in the Tour Guide / Floater position, and, like every other
8 member of the Class, was subject to the same employment practices concerning meal and
9 rest periods. Plaintiff, like every other member of the Class, also claims owed
10 compensation as a result of the Defendant's uniform policies and practices. Thus, the
11 claims of Plaintiff and the members of the Class arise from the same course of conduct
12 by Defendant, involve the same issues, and are based on the same legal theories. Decl.
13 Nordrehaug at ¶ 30. The typicality requirement of Rule 23 is met as to the common
14 issues presented. While Defendant disputes the typicality requirement may be satisfied
15 for purposes of litigation, Defendant does not oppose a finding of typicality for purposes
16 of this Settlement only.

17
18 **E. The Class Representative Has Fairly And Adequately Protected
The Interests Of The Class**

19 Plaintiff contends that Plaintiff provided adequate representation of the interests
20 of the Class in that: (a) his attorneys are competent and experienced in class litigation
21 and generally able to conduct the proposed litigation; and (b) the Plaintiff does not have
22 interests antagonistic to those of the class. *White v. Local 942*, 688 F.2d 85 (9th Cir.
23 1982). Simply put, Rule 23 asks whether Plaintiff, as the Class Representative, will
24 vigorously prosecute the action on behalf of the class and have a basic understanding of
25 the claims. This requirement has been met here. First, Plaintiff is well aware of his
26 duties as the representatives of the Class and has actively participated in the prosecution
27 of this case to date. Plaintiff effectively communicated with Class Counsel, provided
28 documents and information to Class Counsel, and participated extensively in the

1 investigation of the Action. The personal involvement of the Plaintiff was essential to
2 the prosecution of the Action and the monetary settlement reached. Decl. Nordrehaug
3 at ¶30. Second, Plaintiff retained competent counsel with extensive experience in class
4 actions. See Decl. Nordrehaug at ¶31 and Exhibit #3. Third, there is no antagonism
5 between the interests of Plaintiff and those of the Class. Both Plaintiff and the Class
6 Members seek monetary relief under the same set of facts and legal theories. Under such
7 circumstances, there can be no conflicts of interest, and adequacy of representation is
8 presumed. *In re Wirebound Boxes Antitrust Lit.*, 128 F.R.D. 268 (D. Minn. 1989).
9 While Defendant disputes that the adequacy requirement may be satisfied for purposes
10 of litigation, Defendant does not oppose such finding for this Settlement only.

11 **F. The Additional Requirements Of Rule 23 Are Satisfied**

12 Since the requirements of Rule 23(a) have been satisfied, the Court now looks to
13 Rule 23(b)(3) in order to determine whether a class should be maintained under one of
14 the listed categories. Under Rule 23(b)(3), a class action may be maintained if two basic
15 conditions are met. First, common questions must predominate over individual issues,
16 and second, the class action must be superior to available other methods for the fair and
17 efficient adjudication of the controversy.

18 **1. The Predominance Requirement Is Met**

19 Rule 23(b)(3) provides that a class may be maintained if "the court finds that the
20 questions of law and fact common to the members of the class predominate over any
21 questions affecting only individual members." A company-wide policy or practice can
22 establish predominance. *Kurihara*, 2007 U.S. Dist. LEXIS 64224, at *27. Where there
23 exist "broad employer policies [which] can impact many workers at once ... a need for
24 class treatment" is often present. *Sepulveda v. Wal-Mart Stores, Inc.*, 237 F.R.D. 229,
25 247 (C.D. Cal. 2006).

26 Here, Plaintiff contends that the adjudication of the common issues surrounding
27 Defendant's uniform and systematic employment policies applicable to non-exempt
28 employees working as Tour Guides / Floaters could establish Defendant's liability on a

1 class-wide basis. Plaintiff contends that Defendant engaged in a uniform course of
2 failing to properly pay for wages and provide meal/rest periods, which resulted in a
3 systematic failure to provide compensation as required by law and that Defendant's
4 policies with respect to these issues are uniform. The only question is whether
5 Defendant's conduct supports a meritorious claim for liability. Accordingly, Plaintiff
6 maintains that the common issues of law and fact present in this case predominate. Decl.
7 Nordrehaug at ¶ 30. While Defendant disputes that the predominance requirement may
8 be satisfied for purposes of litigation, Defendant does not oppose such a finding for
9 purposes of this Settlement only.

10 **2. The Superiority Requirement Is Met**

11 To certify a class, the Court must also determine "that a class action is superior to
12 other available methods for the fair and efficient adjudication of the controversy." Fed.
13 R. Civ. Proc. 23(b)(3). "Where classwide litigation of common issues will reduce
14 litigation costs and promote greater efficiency, a class action may be superior to other
15 methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
16 1996). Here, a class action is the superior mechanism for the settlement of the claims as
17 pled by Plaintiff. While Defendant disputes that the superiority requirement may be
18 satisfied, Defendant does not oppose such a finding for purposes of this Settlement only.

19 **VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

20 The Parties have agreed upon procedures by which the Class will be provided with
21 written notice of the Settlement similar to that approved and utilized in hundreds of class
22 action settlements. The Class Notice includes information regarding the nature of the
23 Action; a summary of the substance of the Settlement, including Defendant's denial of
24 liability; the definition of the Class; the definition of the Aggrieved Employees; the
25 procedure and time period for objecting to the Settlement, exclusion from the Settlement
26 and participating in the Settlement; a statement that the District Court has preliminarily
27 approved the Settlement; and information regarding the calculation of Settlement Shares.
28 The Parties have jointly drafted a Class Notice, attached to the Agreement as Exhibit A

1 and is hereby submitted for approval.

2 The Class Notice further explains the options for Class Members and Aggrieved
3 Employees as to participation, opt outs and objections. Decl. Nordrehaug at ¶32. The
4 Class Notice also informs Class Members and Aggrieved Employees about the release
5 applicable to them. This notice program was designed to meaningfully reach the largest
6 possible number of potential Class Members and Aggrieved Employees, satisfies the
7 requirements of due process, and is the best notice practicable under the circumstances
8 and constitutes due and sufficient notice to all persons entitled thereto. Decl.
9 Nordrehaug at ¶33. This notice satisfies the content requirements for notice following
10 the exemplar class notice in the *Manual for Complex Litigation*, Second §41.43. This
11 notice also fulfills the requirement that class notices be neutral. *Newberg*, at §8.39.

12 **VIII. CONCLUSION**

13 The Parties have committed substantial amounts of time, energy, and resources
14 litigating and ultimately settling this case. In the judgment of Plaintiff and Class
15 Counsel, the proposed settlement is a fair and reasonable compromise of the issues in
16 dispute in light of the strengths and weaknesses of each party's case and the uncertainty
17 of trial and appeal. Accordingly, Plaintiff respectfully requests that the Court
18 preliminarily approve the proposed settlement, enter the proposed Preliminary Approval
19 Order submitted herewith, and schedule a Final Approval Hearing that is at least 120
20 days from the date of the Preliminary Approval Order.

21 Dated: September 30, 2021

22 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

23 By: /s/ Kyle Nordrehaug
24 Kyle R. Nordrehaug
25 Attorneys for Plaintiff
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