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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

KATHRYNE MARTINEZ-LOPEZ, an
individual, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

MEDAMERICA, INC. a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **37-2020-00034393-CU-OE-CTL**

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

Hearing Date: June 17, 2022
Hearing Time: 10:30 a.m.

Dept.: C-68
Judge: Hon. Richard S. Whitney

Action Filed: September 28, 2020
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1 **I. INTRODUCTION**

2 Plaintiff Kathrynne Martinez-Lopez (“Plaintiff”) respectfully submits this memorandum in
3 support of the unopposed motion for preliminary approval of the proposed class action settlement with
4 Defendant MedAmerica, Inc. (“Defendant”), and seeks entry of an order: (1) preliminarily approving
5 the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all current and former non-exempt employees
7 employed by MedAmerica, Inc. who worked in California at any time during the Class Period” of April
8 15, 2019 through October 15, 2021; (3) provisionally appointing Plaintiff as the representative of the
9 Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
10 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)
11 approving the form and method for providing class-wide notice; (6) directing that notice of the
12 proposed settlement be given to the class; (7) appointing ILYM Group as Settlement Administrator,
13 and (8) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the
14 settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and
15 expenses. As part of this Settlement, Plaintiff is submitting a stipulation for leave to file a First
16 Amended Complaint, and as such, Plaintiff also requests that the Court grant this stipulation.

17 Plaintiff and Defendant (collectively the “Parties”) have reached a full and final settlement of
18 the above-captioned action, which is embodied in the Class Action Settlement Agreement
19 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
20 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

21 As consideration for this Settlement, the Gross Settlement Amount is Four Hundred Thousand
22 Dollars (\$400,000) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement
23 Amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side
24 payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid
25 by Defendant to the Settlement Administrator. The Settlement is all-in with no reversion to Defendant
26 and no need to submit a claim form. Decl. Nordrehaug at ¶3.

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

1 On July 13, 2021, the Parties participated in an all-day mediation presided over by Steven J.
2 Rottman, a respected mediator of wage and hour representative and class actions. Following this
3 mediation, each side, represented by its respective counsel, was able to agree to settle the claims, which
4 settlement was memorialized in a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
5 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
6 substantial monetary payment, and there are substantial litigation and class-certification risks.
7 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
8 and enter the proposed order submitted herewith.

9 II. DESCRIPTION OF THE SETTLEMENT

10 The Gross Settlement Amount is Four Hundred Thousand Dollars (\$400,000). (Agreement at
11 ¶I(S) & III(B).) Under the Agreement, the Gross Settlement Amount consists of the following
12 elements: (1) Settlement Shares to the Participating Class Members, (2) Settlement Administration
13 Expenses, (3) Class Counsel Fees Payment, (4) Class Counsel Litigation Expenses Payment, (5) Class
14 Representative Service Payment, and (6) the PAGA Payment, and excluding any employer payroll
15 taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid
16 from the Gross Settlement and shall be the separate additional obligation of Defendant. (Agreement
17 at ¶ I(S) and III(B).) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
18 (Agreement at ¶¶ I(S) and III(B).) Decl. Nordrehaug at ¶15.

19 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
20 Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶
21 III(F)(9).) Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement
22 Administrator will make payment of all Settlement Shares to Participating Class Members. (Agreement
23 at ¶ III(F)(9).) Decl. Nordrehaug at ¶16.

24 The Net Settlement Amount shall equal the Gross Settlement Amount less the Court approved
25 amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class
26 Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration
27 Expenses. (Agreement at ¶ I(U).) The Net Settlement Amount will be distributed as the Settlement
28 Shares to each Participating Class Member defined at ¶I(Y) as a Class Member who does not submit

1 a valid and timely Election Not to Participate in Settlement. (Agreement at ¶¶ III(D)(1).) The
2 Settlement Share will be calculated as follows: (i) the Settlement Administrator shall divide the Net
3 Settlement Amount by the total number of pay periods worked by all Participating Class Members as
4 reflected in their dates of employment to determine a dollar amount per week ("Pay Period Rate"); and
5 (iii) the Settlement Administrator shall then take the number of pay periods worked by each
6 Participating Class Member, individually, and multiply it by the Pay Period Rate to calculate each
7 Participating Class Member's respective Settlement Share. (Agreement at ¶ III(D)(2).) Pay periods
8 will be based on Defendant's records, however Class Members will have the right to challenge their
9 pay periods. Decl. Nordrehaug at ¶17.

10 Class Members may choose to opt-out of the Settlement by following the directions in the Class
11 Notice. (Agreement at ¶ III(F)(3), Ex. A.) All Class Members who do not "opt out" will be deemed
12 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
13 Settlement Share. (Agreement at ¶ III(F)(3)(c).) An Aggrieved Employee who opts out the Settlement
14 will still be paid their allocation of the PAGA Payment and will remain subject to the release of the
15 PAGA Released Claims, regardless of their request for exclusion. (Agreement at ¶ III(F)(3)(c).)
16 Finally, the Class Notice will also advise the Class Members of their right to object to the Settlement
17 and/or dispute their Pay Periods. (Agreement at ¶ III(F)(3), Ex. A.) Decl. Nordrehaug at ¶18.

18 A Participating Class Member must cash his or her Settlement Share check within 180 days
19 after it is mailed. (Agreement at ¶ III(F)(10).) The Settlement Administrator will send a reminder to
20 Participating Class Members who have not cashed their checks within 120 days after its last mailing
21 to the affected individual. (Agreement at ¶ III(F)(10).) Any settlement checks not cashed within 180
22 days will be voided and any the funds from such uncashed checks will be paid to the California State
23 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
24 cash their check. (Agreement at ¶ III(F)(10).) Decl. Nordrehaug at ¶19.

25 The Parties have agreed to use ILYM Group as the Settlement Administrator. (Agreement at
26 ¶ III(E).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the
27 expenses of administering the Settlement in an amount not to exceed \$10,000. (Agreement at ¶
28 III(C)(4).) Decl. Nordrehaug at ¶20.

1 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
2 to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.
3 (Agreement at ¶ III(C)(2).) Class Counsel will also be allowed to apply separately for an award of
4 Class Counsel Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶
5 III(C)(2).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
6 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ III(C)(1).) Decl.
7 Nordrehaug at ¶21.

8 The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the
9 Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the LWDA's share
10 of the PAGA Payment pursuant to PAGA and 25% (\$6,250) will be distributed on a pro rata basis,
11 based on their respective number of pay periods worked during the PAGA Period. (Agreement at ¶
12 III(C)(3).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
13 to the release of the PAGA Released Claims, whether or not they opt out of the Settlement. (Agreement
14 at ¶ III(C)(3).) As set forth in the accompany proof of service, the LWDA has been served with this
15 motion and the Agreement. Decl. Nordrehaug at ¶22.

16 **III. CASE BACKGROUND**

17 The description of the case and claims, along with the procedural history is set forth in the
18 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in investigation and the exchange of
19 documents and information in connection with the Action which permitted Class Counsel to perform
20 a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in
21 mediation with Steven J. Rottman on July 13, 2021, which after arm's length negotiations, resulted in
22 this Settlement. Decl. Nordrehaug, ¶12.

23 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 24 **GRANT PRELIMINARY APPROVAL**

25 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
26 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
27 California "[p]ublic policy generally favors the compromise of complex class action litigation."
28 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*

1 Cases, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
2 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
3 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
4 denied, 459 U.S. 1217 (1983)).

5 Preliminary approval is the first of three steps that comprise the approval procedure for
6 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
7 members. The third step is a final settlement approval hearing, at which evidence and argument
8 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
9 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
10 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

9 In considering a potential settlement for preliminary approval purposes, the trial court does not
10 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
11 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
12 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
13 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
14 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
15 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
16 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
17 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
18 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
19 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
20 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

21 With regard to class action settlements, the opinions of counsel should be given considerable
22 weight both because of counsel’s familiarity with this litigation and previous experience with cases
23 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
24 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
25 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
26 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
27 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
28 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

9 If the proposed settlement appears to be the product of serious, informed, noncollusive
10 negotiations, has no obvious deficiencies, does not improperly grant preferential
11 treatment to class representatives or segments of the class, and falls within the range of
12 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.

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

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

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

17 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
18 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
19 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
20 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
Class Claims in accordance with this Settlement upon full funding of the Settlement.³

21 ³ The release applicable to the Class is appropriately tethered to solely to the allegations in the
22 Action as the "Released Class Claims" are "all claims as pled in the First Amended Complaint which
23 will include class claims based on the facts of the operative Complaint including claims for (1) failure
24 to provide meal periods or pay premium wages for missed, denied or unauthorized meal periods; (2)
25 failure to provide rest breaks, or pay premium wages for missed, denied or unauthorized rest periods;
26 (3) failure to pay overtime wages; (4) failure to pay minimum wages, including the prevailing minimum
27 wage, off-the-clock claims, and payment for all hours worked; (5) failure to timely pay wages during
28 employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to
maintain required records, including failure to keep accurate and complete payroll records; (8) failure
to furnish accurate itemized wage statements or provide fully and accurately itemized wage statements;
(9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10)
California Civil Code section 558 penalties and civil penalties pursuant to PAGA; and (11) unfair and

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

9 The Parties attended an arms-length mediation session with Steven J. Rottman, a respected and
10 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
11 for the mediation, Defendant provided Class Counsel with necessary information for the members of
12 the Class, including time data, payroll data and data concerning the composition of the Class. Class
13 Counsel analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and
14 submitted a mediation brief and damage valuation to the Mediator. At the conclusion of the all-day
15 mediation, the Parties agreed to this Settlement. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and
16 Class Counsel believe that this Settlement is fair, reasonable and adequate.

17 As consideration for this Settlement, the Gross Settlement Amount is Four Hundred Thousand
18 Dollars (\$400,000). The Settlement is all-in with no reversion to Defendant and no need to submit a
19 claim form. Decl. Nordrehaug at ¶ 3.

20 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
21 the course of more than a year, Class Counsel has diligently evaluated the Class Members' claims

22 _____
23 unlawful business practices, as well as any known or unknown wage and hour claims that were asserted
24 or could have been asserted based on the factual allegations contained in the operative Complaint as
25 amended. This includes claims for unpaid wages, meal periods and rest breaks and related penalties,
26 expense reimbursements, waiting time penalties, payroll stub violations and claims for civil penalties
27 under Labor Code section 2698 et seq., Labor Code sections 201-204 et seq., 210, 226, 226.3, 226.7,
28 232, 232.5, 351, 432.5, 510, 511, 512, 515, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5(k),
1198, 1199, 2699.3, 2802, IWC Wage Orders 4-2001 and 7(A)(3), and any other applicable wage
orders, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) and Title 8,
Section 1 1070(14), Business and Professions Code section 17200 et seq., and claims or potential
claims for attorneys' fees and costs". (Agreement at ¶(III)(G)(1).)

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

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

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

21 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within** 22 **the Range for Approval**

23 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
24 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
25 receive payment according to the same formula. (Agreement at ¶ III(D)(2).) The Gross Settlement
26 Amount provides an average value of \$1,374 per Class Member and \$41 per pay period, and after the
27 proposed deductions, the Net Settlement Amount provides an average recovery of \$658 per Class
28 Member and \$19 per pay period. Decl. Nordrehaug, ¶6.

1 The calculations to compensate for the amount due to the Class Members at the time this
2 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
3 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
4 putative class members and determined the potential maximum damages for the class claims. For the
5 Class, Plaintiff determined that the alleged unpaid overtime wages due to the miscalculation of the
6 regular rate of pay to be \$19,525, the alleged unpaid wages due based on off the clock allegations to
7 be \$568,379, the maximum meal period damages were estimated to be \$287,334 based upon a potential
8 11% violation rate observed In the time punch records, the maximum rest period damages were
9 estimated to be \$287,334 based upon the same violation rate, and the maximum damages for
10 unreimbursed expenses were estimated to be \$139,014 at a rate of \$30 of unreimbursed expenses
11 incurred each month. In total, the damages for the Class were calculated to have a maximum total value
12 of \$1,216,608. In addition, Plaintiff calculated that the maximum value of the waiting time penalties
13 were between \$406,615 and \$806,220 and the maximum value of the wage statement penalties to be
14 between \$322,150 and \$958,650, both depending on the predicate violation giving rise to the penalty.
15 However, these wage statement and waiting time penalties claims potentially have a much smaller
16 value, even if damages were awarded, to the extent that they are only derivative of the meal and rest
17 break claims.⁴ Decl. Nordrehaug, ¶6.

18 Consequently, the Gross Settlement Amount represents more than 32% of the value of the
19 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
20
21

22 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
23 226, Plaintiff recognized that these claims were subject to various defenses asserted by Defendant,
24 including, but not limited to, a good faith dispute defense as to whether any premium wages for meal
25 or rest periods or other wages were owed given Defendant's position that Plaintiff and the putative class
26 members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
27 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
28 dispute as to whether and when the wages were due."). Additionally, Courts have held that violations
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 Plaintiff's claims on these theories is uncertain.

1 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
2 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
3 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
4 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

5 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
6 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
7 Defendant present serious threats to the claims of the Plaintiff and the other Class Members, including
8 that Class Members signed arbitration agreements and, as a result, the class claims would have been
9 subject to a dismissal. Defendant also asserted that Defendant's practices complied with all applicable
10 Labor laws. Defendant maintained that off the clock work was contrary to company policy and was
11 not permitted in practice. Defendant contended that their meal and rest period policies fully complied
12 with California law, that Defendant's timekeeping system recorded meal periods, and that all meal
13 periods were provided and many facial violations seemed to have been paid by a penalty. Further,
14 Defendant argued that Defendant was not required to record rest periods, so there was no evidence of
15 missed rest periods. Finally, Defendant could argue that the Supreme Court decision in *Brinker v.*
16 *Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class
17 certifiability as to the meal and rest period claims. Defendant also argued that based on its facially
18 lawful practices, it acted in good faith and without willfulness, which if accepted would negate the
19 claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of
20 the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal
21

22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
23 PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

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 and rest period violations. If successful, Defendant's defenses could eliminate or substantially reduce
2 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
3 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
4 Nordrehaug, ¶ 24.

5 Defendant also argued that the individual experience of each putative class member varied with
6 respect to the claims. Defendant could also contest class certification by arguing injury and good faith
7 were case by case determinations that precluded class certification. Plaintiff is aware of cases where
8 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th
9 885, 256 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
10 contended that individual differences in work experiences not only impacted damages but would also
11 impact certification. Finally, even if class certification was successful, as demonstrated by the
12 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
13 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
14 While other cases have approved class certification in wage and hour claims, class certification in this
15 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
16 ¶ 25.

17 After arm's length negotiations between experienced and informed counsel, the Parties
18 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
19 \$400,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

20 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
21 and likely duration of further litigation likewise favors the settlement. Regardless of
22 how this Court might have ruled on the merits of the legal issues, the losing party likely
23 would have appealed, and the parties would have faced the expense and uncertainty of
24 litigating an appeal. 'The expense and possible duration of the litigation should be
25 considered in evaluating the reasonableness of [a] settlement.'

26 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
27 (9th Cir. 2000).)

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

The relief provided in the Settlement will benefit all members of the Class. The Settlement does
not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class

1 Members are all determined under a neutral methodology. Each Participating Class Member will
2 receive the same opportunity to participate in and receive payment through a neutral formula that is
3 based upon the pay periods worked by that individual. Decl. Nordrehaug, ¶4.

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

19 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 20 **Preliminary Approval Of The Settlement**

21 The stage of the proceedings at which this Settlement was reached also militates in favor of
22 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
23 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
24 Members' claims before the Action was filed. Class Counsel conducted a review and analysis of the
25 relevant documents and data. Class Counsel was also experienced with the claims at issue here, as
26 Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the
27 agreement to settle did not occur until Class Counsel possessed sufficient information to make an
28 informed judgment regarding the likelihood of success on the merits and the results that could be

1 obtained through further litigation. Decl. Nordrehaug at ¶28.

2 Based on the foregoing data and their own independent investigation and evaluation, Class
3 Counsel is of the 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 Class in light
5 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
6 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
7 parties possessed sufficient information to make an informed judgment regarding the likelihood of
8 success on the merits and the results that could be obtained through further litigation. Decl.
9 Nordrehaug at ¶29.

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

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

15 All current and former non-exempt employees employed by MedAmerica, Inc. who
16 worked in California at any time during the Class Period.

17 (Agreement at ¶ I(C).)

18 The “Class Period” is from April 15, 2019 through October 15, 2021. (Agreement at ¶ I(J).)

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

20 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
21 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
22 class certification is appropriate as follows:

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

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

While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,

1 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
2 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
3 settlement only. (Agreement at ¶ III(D).)

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

5 Plaintiff brings this action on behalf of a Class of individuals during the applicable Class Period.
6 Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be
7 determined through examination of Defendant's files. Given that the Class consists of approximately
8 291 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
9 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
10 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
11 asserts that the 291 current and former employees that comprise the Class can be identified based on
12 Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

19 Commonality exists if there is a predominant common legal question regarding how an
20 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
21 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
22 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
23 certification stage since the question is "essentially a procedural one that does not ask whether an action
24 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

25 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
26 common questions of whether Defendant miscalculated the regular rate, whether Defendant properly
27 paid wages for all hours worked, whether the Defendant failed to provide meal and rest periods,
28 whether Defendant failed to provide required expense reimbursement, and whether Class Members are

1 entitled to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant
2 disputes that common questions predominate but will not oppose such a finding for purposes of this
3 Settlement only.

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

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

11 In the instant case, Plaintiff contends that there can be little doubt that the typicality requirement
12 is satisfied. The Plaintiff, like every other member of the Class, worked for Defendant as a non-exempt
13 employee during the Class Period. Plaintiff contends that, like every other member of the Class, he
14 was subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
15 Plaintiff asserts that the claims of the Plaintiff and the Class Members arise from the same course of
16 conduct by the Defendant, involve the same employment policies and practices of Defendant, and are
17 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts
18 that the typicality requirement is met as to the common issues presented in this case. Defendant
19 disputes that Plaintiff and the Class Members were subjected to a similar course of conduct and instead
20 contends that the Class Mmehrs were subjected to different scheduling and work duty requirements,
21 and further disputes that Plaintiff’s claims are typical of the Class, but will not oppose a finding of
22 typicality for purposes of this Settlement only.

23 **E. The Class Representation Fairly and Adequately Protects the Class**

24 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
25 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
26 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
27 met here. First, Plaintiff is well aware of her duties as the representative and has actively participated
28 in the prosecution of this case to date. She effectively communicated with counsel, provided

documents to counsel and participated in the investigation and negotiations in the Action. Second, Plaintiff retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories. Defendant disputes 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, Plaintiff contends that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff. 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 Settlement Administrator an electronic database containing each Class Member’s Class Data. (Agreement at ¶ III(F)(2)(a).) Within 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class U.S. Mail using the most current mailing address information available.

(Agreement at ¶ III(F)(2)(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; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award request; and (vi) the anticipated expenses of the Settlement Administrator. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement at ¶ III(F)(4)(a).) In the event of a re-mailing, the deadline will be extended by an additional 15 days. (Agreement at ¶ III(F)(4)(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(F)(4)(a).) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Settlement Share. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

VIII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary Approval.

Dated: May 23, 2022 **BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq.
Attorney for Plaintiff