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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 JAKARI WILSON, an individual, on
15 behalf of himself and on behalf of all
16 persons similarly situated,

17 Plaintiff,

18 vs.

19 WHOLESOME HARVEST BAKING,
20 LLC, a Limited Liability Company;
21 BIMBO BAKEHOUSE LLC, a Limited
22 Liability Company; and DOES 1 through
23 50, inclusive,

24 Defendants.

CASE No. **4:20-cv-05186-YGR**

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Hearing Date: December 7, 2021
Hearing Time: 2:00 p.m.

District Judge: Hon. Yvonne Gonzalez
Rogers

Oakland Courthouse,
Courtroom 1 - 4th Floor

Action Filed: June 1, 2020

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on December 7, 2021, at 2:00 p.m. in the
3 United States District Court for the Northern District of California, located at the
4 Oakland Courthouse, Courtroom 1 - 4th Floor, 1301 Clay Street, Oakland, CA 94612,
5 before District Judge Yvonne Gonzalez Rogers, Plaintiff Jakari Wilson (“Plaintiff”) will
6 move for preliminary approval of the proposed class settlement with Defendants
7 Wholesome Harvest Baking, LLC and/or Bimbo Bakehouse LLC (“Defendants”). This
8 motion is unopposed as based on the Class Action Settlement Agreement (“Agreement”)
9 between the parties filed concurrently with this motion.

10 The motion will be based on this Notice of Motion and the attached Memorandum
11 of Points and Authorities filed herewith, the Declaration of Kyle Nordrehaug and
12 attached exhibits, the argument of counsel and upon such other material contained in the
13 file and pleadings of this action.

14 Respectfully submitted,

15
16 Dated: October 29, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

17 By: /s/ Norman Blumenthal
18 Norman B. Blumenthal
19 Kyle R. Nordrehaug
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jakari Wilson (“Plaintiff”) and Defendants Wholesome Harvest Baking,
4 LLC and/or Bimbo Bakehouse LLC (“Defendants”) have reached a full and final
5 Settlement of the above-captioned class action, which is embodied in the Class Action
6 Settlement Agreement (“Agreement”) filed concurrently with the Court as Exhibit #1 to
7 the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”).¹ By this motion, Plaintiff
8 seeks preliminary approval of the Agreement as fair, reasonable, and adequate, entry of
9 the Preliminary Approval Order submitted herewith, and scheduling of the Final
10 Approval Hearing to determine final approval of the Settlement.

11 **II. SUMMARY OF THE SETTLEMENT**

12 Counsel for the Parties, after litigation and contentious settlement negotiations,
13 agreed to a settlement that is fair, reasonable, and favorable to the Class. The Class is
14 defined as “all individuals who are or previously were employed by Defendants in
15 California who were classified as non-exempt employees during the Class Period.”
16 (Agreement at ¶ I(C).) The Class Period is June 1, 2016 through the earlier of
17 Preliminary Approval of the Settlement or November 18, 2021. (Agreement at ¶ I(J).)
18 Decl. Nordrehaug, ¶3.

19 Under the terms to which the Parties have agreed, Defendants agree to pay One
20 Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) (the “Gross Settlement
21 Amount”) in consideration for the settlement and the release of claims as described in
22 the Agreement. (Agreement at ¶ III(B).) The Gross Settlement Amount consists of
23 Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, the Class Representative Service Payment, the PAGA
25 Payment, and the Net Settlement Amount to be distributed as Settlement Shares to
26 Participating Class Members. (Agreement at ¶ I(S).) The employer's share of payroll
27

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

1 taxes will be paid by Defendants in addition to the Gross Settlement Amount.
2 (Agreement at ¶ III(B).) Decl. Nordrehaug, ¶4.

3 This is an all-in Settlement. There is no reversion of any portion of the Gross
4 Settlement Amount to Defendants, and no claim form is required to be paid. (Agreement
5 at ¶ III(B).) Class Members who do not opt-out of the Class by timely submitting an
6 opt-out request shall be paid their share of the Net Settlement Amount based on the
7 number of workweeks worked by the Class Member during the Class Period.
8 (Agreement at ¶ III(D).) Decl. Nordrehaug, ¶5.

9 This is an excellent result for the members of the Class. The litigation risks that
10 the Plaintiff and Class Members face if the case were not settled include, among other
11 things, an adverse decision on the merits, loss of motions which would result in limiting
12 any exposure, the possibility that a trial would return a less favorable verdict, and
13 possible appellate review. Liability in this case was uncertain because the Court, as the
14 stipulated trier of fact, may have found that some or all of the Class Members were
15 properly compensated and/or that Defendants complied with applicable law. Decl.
16 Nordrehaug, ¶6. These defenses could have reduced the amount recovered or a judgment
17 in favor of Defendants with no recovery at all for the members of the Class. Class
18 Counsel and Plaintiff wish to avoid these risks and uncertainties, as well as the
19 consumption of time and resources of litigation, through settlement pursuant to the terms
20 and conditions of the Agreement. Decl. Nordrehaug, ¶6.

21 **III. NATURE OF THE CASE**

22 The procedural history is set forth at length in the accompanying Declaration of
23 Nordrehaug at paragraphs 7 through 12, and is summarized below. Plaintiff initially
24 filed the Class Action against Defendant in the Superior Court of California, Contra
25 Costa County, and then also filed a separate PAGA Action against Defendant in the same
26 Court based on the same factual allegations. Decl. Nordrehaug, ¶¶ 7-9. On July 29,
27 2021, Plaintiff filed an amended complaint ("Amended Complaint") [Doc. No. 32] which
28 adds the Fair Labor Standards Act ("FLSA") claim as a predicate violation to the Unfair

1 Competition Law ("UCL") cause of action in the Action, and the PAGA claims as set
2 forth in the PAGA Action, and the PAGA Action will be dismissed without prejudice so
3 that approval of the entire settlement could be sought in this Action.

4 Class Counsel conducted significant research and investigation in furtherance of
5 the prosecution of the Action. This investigation, research and litigation included, among
6 other things, (a) multiple conferences with Plaintiff's and Defendants' counsel; (b)
7 inspection and analysis of hundreds of pages of documents and other information
8 produced by Plaintiff and Defendants informally during the litigation of the Action and
9 in preparation for mediation (including class data); (c) analysis of the numerous legal
10 positions taken by Defendant; (d) investigation into the viability of class treatment of the
11 claims asserted in the Action; (e) analysis of potential class-wide damages, including
12 reviewing class data, and analyzing information sufficient to understand Defendants'
13 potential defenses thereto; (f) research of the applicable law with respect to the claims
14 asserted in the Complaint as well as the potential defenses thereto; and (g) assembling
15 and analyzing extensive data and information for calculating damages. Decl.
16 Nordrehaug, ¶10.

17 Class Counsel has extensive experience in litigating wage and hour class actions
18 in California and has thoroughly analyzed the value of the claims during the prosecution
19 of this Action. Decl. Nordrehaug, ¶11.

20 Following the investigation of the claims by both Parties, the Parties agreed to
21 engage in private mediation. The Parties attended an all-day mediation on April 14,
22 2021 before Tripper Ortman, a respected and experienced mediator. The mediation
23 included discussion and examination of the parties' respective positions on the legal and
24 factual issues raised on behalf of the Class. At all times, the parties' settlement
25 negotiations have been non-collusive, adversarial, and at arm's length. At the conclusion
26 of the mediation, the Parties were unable to reach a settlement. Through continued
27 negotiations through the Mediator, culminating in a mediator's proposal, the Parties
28 agreed on the basic terms of a class settlement. The Parties then negotiated the final

1 Agreement now submitted for this Court's consideration. Decl. Nordrehaug, ¶12.

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

3 **A. The Gross Settlement Amount**

4 To implement the terms of this Settlement, Defendants agree to pay the Gross
5 Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000)
6 in full and complete satisfaction of the Released Class Claims. (Agreement at ¶ III(B).)
7 The Gross Settlement Amount consists of all payments to Class Members from the Net
8 Settlement Amount, plus (i) the Settlement Administration Expenses, (ii) the Class
9 Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (iii) the PAGA
10 Payment, and (iv) the Class Representative Service Payment. (Agreement at ¶ III(C)-
11 (D).) The remainder of the Gross Settlement Amount after the deduction of the Court-
12 approved amounts for Settlement Administration Expenses, Class Counsel Fees
13 Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment and the Class
14 Representative Service Payment (called the "Net Settlement Amount"), shall be
15 distributed to Participating Class Members as their Settlement Shares. (Agreement at ¶¶
16 I(U) and (III)(D).) Decl. Nordrehaug, ¶13.

17 **B. Settlement Shares**

18 Each Class Member who does not request exclusion ("Participating Class
19 Members") shall be entitled to a pro rata portion of the Net Settlement Amount. The
20 Settlement Share for each Participating Class Member will be calculated by (a) dividing
21 the Net Settlement Amount by the total number of workweeks the Participating Class
22 Members were employed by Defendants during the Class Period to determine a dollar
23 amount per week ("Weekly Rate"); and (ii) multiplying the number of workweeks each
24 Participating Class Member was employed by Defendants by the Weekly Rate to
25 calculate each Participating Class Member's individual Settlement Share. (Agreement
26 at ¶ III(D)(2).) Decl. Nordrehaug, ¶14.

27 The Gross Settlement Amount will be paid by Defendants within fifteen (15)
28 business days after the Effective Date. (Agreement at ¶ III(H)(10).) Any checks issued

1 shall remain valid and negotiable for one hundred eighty (180) days, and any funds not
2 distributed after the expiration of the settlement checks shall be paid to the California
3 Controller's Unclaimed Property Fund to be held for the benefit of the Participating
4 Class Member. (Agreement at ¶ III(H)(11).) Decl. Nordrehaug, ¶15.

5 **C. Scope of the Release**

6 The scope of the release by all Class Members who do not opt out tracks the scope
7 of the allegations in the Action. As of the Effective Date, Defendants shall be entitled
8 to a release from the Participating Class Members of all Released Class Claims, which
9 are:

10 any and all wage and hour claims, obligations, demands, actions, rights,
11 causes of action, and liabilities (including state statutory and common law
12 claims) alleged in the Action, or that could have been alleged based on the
13 facts alleged in the Action, that arose during the Class Period, including: (a)
14 failure to pay overtime; (b) failure to pay minimum wages; (c) failure to
15 timely pay wages during employment; (d) failure to pay final wages on
16 termination; (e) failure to provide accurate itemized wage statements; (f)
17 failure to provide compliant meal and rest periods; (g) failure to pay meal
18 and rest period premiums; (h) failure to reimburse for business-related
19 expenses; (i) failure to pay wages due to discharged and quitting
20 employees; (j) failure to maintain required records; (k) claims that are or
were asserted or that could have been asserted based on the facts alleged in
the Action; and (l) penalties (including civil and statutory penalties,
including penalties under PAGA), liquidated damages, punitive damages,
interest, attorneys' fees, litigation costs, restitution, equitable relief, or
additional damages which allegedly arise from the claims described in (a)
through (k) above under any applicable law, which arose during the Class
Period, and expressly excluding all other claims, including claims for
wrongful termination, unemployment insurance, disability, social security,
workers' compensation, and class claims outside of the Class Period and
PAGA claims outside of the PAGA Period.

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

22 **D. Settlement Administration**

23 Subject to Court approval, the Parties have agreed on ILYM Group to administer
24 the settlement in this action ("Settlement Administrator"). (Agreement at ¶ III(G).) The
25 Settlement Administration Expenses will not exceed \$20,000. (Agreement at ¶
26 III(C)(3).) Decl. Nordrehaug, ¶17.

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

28 Class Counsel will apply to the Court for an award of reasonable attorneys' fees

1 in an amount not to exceed 1/3 of the Gross Settlement Amount, and for reimbursement
2 of reasonable expenses in an amount not to exceed \$30,000, subject to Court approval.
3 (Agreement at ¶ III(C)(2).) Plaintiff will also apply for Court approval of a service
4 award in an amount not to exceed \$10,000 in consideration for his service as the sole
5 representative of the Class. (Agreement at ¶ III(C)(1).) Decl. Nordrehaug, ¶18.

6
7 **V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR
PRELIMINARY APPROVAL**

8 When a proposed class-wide settlement is reached, the settlement must be
9 submitted to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A.
10 Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. Preliminary
11 approval is the first of three steps that comprise the approval procedure for settlements
12 of class actions. *See, e.g., Louie v. Kaiser Found. Health Plan, Inc.*, 2008 U.S. Dist.
13 LEXIS 78314 (S.D. Cal. 2008). The second step is the dissemination of notice of the
14 settlement to all class members. The third step is a final settlement approval hearing, at
15 which evidence and argument concerning the fairness, adequacy, and reasonableness of
16 the settlement may be presented and class members may be heard regarding the
17 settlement. *See Manual for Complex Litigation*, Second §30.44 (1993).

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

1 settlement is given to the class members and a final settlement hearing is held by the
2 Court.

3
4 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

5 “The parties must provide the court with information sufficient to enable it to
6 determine whether to give notice of the propos[ed] [settlement] to the class.” Fed. R.
7 Civ. P., rule 23(e)(1)(A). The approval of a proposed settlement of a class action suit is
8 a matter within the broad discretion of the trial court. *Stanton v. Boeing*, 327 F.3d 938,
9 959 (9th Cir. 2003). Preliminary approval does not require the trial court to answer the
10 ultimate question of whether a proposed settlement is “fair, reasonable and adequate.”
11 *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Manual for Complex*
12 *Litigation*, Third, §§ 20.212. At final approval of a settlement, a court is to balance
13 several factors, including: “[i] the strength of the plaintiffs' case; [ii] the risk, expense,
14 complexity, and likely duration of further litigation [and] the risk of maintaining class
15 action status throughout the trial; [iii] the amount offered in settlement; [iv] the extent
16 of discovery completed and the stage of the proceedings; [and] [v] the experience and
17 views of counsel” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

18 In considering a potential settlement for preliminary approval purposes, the trial
19 court does not have to reach any ultimate conclusions on the issues of fact and law which
20 underlie the merits of the dispute, and need not engage in a trial on the merits. *Officers*
21 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615 (9th Cir. 1982), cert. denied, 459 U.S.
22 1217 (1983). The question of whether a proposed settlement is fair, reasonable and
23 adequate necessarily requires a judgment and evaluation by the attorneys for the parties
24 based upon a comparison of “the terms of the compromise with the likely rewards of
25 litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
26 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
27 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts
28 recognize that the opinion of experienced counsel supporting the settlement is entitled

1 to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
2 *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d
3 at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
4 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985).

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

6 A number of factors are to be considered in evaluating a settlement for purposes
7 of preliminary approval. No one factor should be determinative, but rather all factors
8 should be considered. "If the proposed settlement appears to be the product of serious,
9 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
10 grant preferential treatment to class representatives or segments of the class, and falls
11 within the range of possible approval, then the court should direct that the notice be
12 given to the class members of a formal fairness hearing." *In re Tableware Antitrust*
13 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2011). To make this determination, the
14 Court must consider the following factors:

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

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

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

28 **1. The Class Representative and Class Counsel Have Adequately**

1 **Represented the Class**

2 The proposed Class Representative and Class Counsel have more than adequately
3 represented the Class Members and Aggrieved Employees. The Parties scheduled a
4 private mediation to take place before Tripper Ortman, Esq., a respected and experienced
5 mediator for class actions and wage and hour lawsuits (the “Mediator”). (Decl.
6 Nordrehaug, ¶ 12.) Prior to mediation, Defendants provided to Plaintiff and Class
7 Counsel payroll and employment data and other information regarding the Class
8 Members, various internal documents, and other compensation and employment-related
9 materials. (Decl. Nordrehaug, ¶ 10.) Class Counsel analyzed the data with the assistance
10 of damages expert Berger Consulting and prepared and submitted a mediation brief to
11 the Mediator. (Decl. Nordrehaug, ¶¶ 22-24.) Class Counsel is experienced with these
12 class and PAGA claims and has settled similar claims on behalf of employees. (Decl.
13 Nordrehaug, ¶31.) Most importantly, Plaintiff and Class Counsel believe that this
14 settlement is fair, reasonable and adequate and in the best interests of the Class Members.

15 **2. The Settlement Was Reached Through Arm’s Length Negotiations and**
16 **Is the Product of Serious, Informed and Noncollusive Negotiations**

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

1 Class Counsel has conducted a thorough investigation into the facts of the class
2 action, including a review of relevant documents and data and a diligent investigation
3 of the Class Members' claims against Defendant. Class Counsel also retained an expert
4 to prepare a damage valuation for use in the mediation and negotiations. Decl.
5 Nordrehaug, ¶20.

6 Plaintiff and Class Counsel recognize the expense and length of continuing to
7 litigate and trying this Action against Defendants through possible appeals, which could
8 take several years, and are also mindful of and recognize the inherent problems of proof
9 under, and alleged defenses to, the claims asserted in the Action. In the absence of an
10 approved settlement, Plaintiff would face a protracted litigation course, including a
11 motion for summary judgment, and trial and appellate proceedings that would consume
12 time and resources and present each of them with ongoing litigation risks and
13 uncertainties. Based on the foregoing documents and data, and their own independent
14 investigation and evaluation, Class Counsel is of the opinion that the settlement with
15 Defendants for the consideration and on the terms set forth in the Settlement is fair,
16 reasonable, and adequate in light of all known facts and circumstances, including the risk
17 of significant delay, defenses asserted by Defendants, and potential appellate issues.
18 Decl. Nordrehaug, ¶ 21.

19 Here, the negotiations have been hard-fought and aggressive with capable
20 advocacy on both sides. Accordingly, "[t]here is likewise every reason to conclude that
21 settlement negotiations were vigorously conducted at arms' length and without any
22 suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*,
23 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

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

27 The proposed Settlement herein has no "obvious deficiencies" and is well within
28 the range of possible approval. All Class Members will receive an opportunity to
participate in and receive payment according to the same formula. The Gross Settlement

1 Amount provides an average value of \$2,278 per Class Member and \$40 per workweek,
2 and after deductions, the Net Settlement Amount provides an average recovery of \$1,408
3 per Class Member and \$25 per work week. Decl. Nordrehaug, ¶22.

4 In advance of settlement negotiations, Class Counsel received class data
5 concerning the Class, which permitted Class Counsel to make an intelligent evaluation.
6 For the individuals whose claims are at issue in this Action, Class Counsel reviewed the
7 data and used information provided by Defendants to determine the potential damage
8 valuation. The calculations to compensate for the amount due for the Class at the time
9 of the mediation were calculated by Berger Consulting, Plaintiff's damage expert. Decl.
10 Nordrehaug, ¶22.

11 Using the class data, based upon the analysis of Plaintiff's expert, Plaintiff
12 calculated that the maximum valuation for mediation as follows: off the clock damages
13 due to rounding were \$188,768, unpaid overtime wages dues to the miscalculation of the
14 regular rate were \$39,733, meal period damages were \$2,219,198 based upon an alleged
15 58% potential violation rate from time punch data, rest period damages were \$3,660,320
16 based upon an alleged 100% violation rate under Plaintiff's theory of rest periods being
17 cut short, and unreimbursed expenses damages were \$325,346. As a result, Plaintiff's
18 total damage valuation at mediation, not counting potential penalties, was \$6,433,364.
19 As to penalties, Plaintiff's expert calculated the maximum wage statement penalties to
20 be \$1,083,700 and the maximum waiting time penalties to be \$2,035,683, however, these
21 wage statement and waiting time penalties claims potentially have a much smaller value,
22 even if damages were awarded, to the extent that they are derivative of the meal and rest
23 break claims.² These claims faced significant challenges to establish class-wide liability

25 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code
26 Sections 203 and 226, Plaintiff recognized that these claims were subject to various
27 defenses asserted by Defendants, including, but not limited to, a good faith dispute
28 defense as to whether any premium wages for meal or rest periods or other wages or
expenditures were owed. See generally *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008

1 given Defendants' facially lawful policies. Decl. Nordrehaug, ¶22.

2 The settlement of \$1,750,000, before deductions, represents more than 27% of the
3 estimated maximum damages for the Class, assuming these amounts could be proven in
4 full at trial. Importantly, the above maximum calculations should then be adjusted in
5 consideration for both the risk of certification and the risk of establishing class-wide
6 liability on all claims. This settlement amount is fair and reasonable given the defenses
7 asserted by Defendants. Because the alternative to this Settlement could be the Class
8 receiving nothing or less after trial, Plaintiff accepted the settlement as fair and
9 reasonable. Clearly the goal of this litigation to obtain redress for the Class has been
10 met. Decl. Nordrehaug, ¶22.

11 In *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) the
12 federal district court for the Northern District of California approved a settlement of an
13 action claiming unpaid overtime wages where the settlement amount constituted
14 approximately 25% of the estimated damages for the class. In *Stovall-Gusman v. W.W.*
15 *Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015), the District Court
16 granted final approval where "the proposed Gross Settlement Amount represents
17 approximately 10% of what class might have been awarded had they succeeded at trial."

18 _____
19 WL 4384147, at *9 (C.D. Cal. 2008) (granting defendant's motion for summary
20 judgment on claim for failure to provide accurate itemized wage statements "because a
21 good faith dispute exists as to whether [plaintiffs] are exempt, [therefore, defendant] was
22 not 'knowing and intentional' in failing to provide [Section 226] statements"); See
23 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful
24 failure to pay wages if the employer and employee have a good faith dispute as to
25 whether and when the wages were due."). Given the fact that the off-the-clock claim
26 based on interview time has been dismissed by some Courts, Defendants could certainly
27 contend this good faith defense. Additionally, the question of whether violations of the
28 meal period regulations, which require payment of a "premium wage" for each improper
meal period, give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's
China Bistor, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon
Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). Thus, the viability of Plaintiff's
claims on these theories is very uncertain.

1 In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir.
2 2000), the Court of Appeals affirmed the approval of a class settlement which
3 represented "roughly one-sixth of the potential recovery". See also *Viceral v. Mistras*
4 *Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
5 settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL
6 2472316, (C.D. Cal. 2014) (approving wage and hour class action settlement worth
7 "somewhere between 9% and 18%" of maximum valuation). Here the settlement
8 consideration similarly constitutes a higher percentage of the estimated realistic damages
9 for the Class.

10 Where both sides face significant uncertainty, the attendant risks favor settlement.
11 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of
12 defenses asserted by Defendants presented serious threats to the claims of Plaintiff and
13 the other Class Members. Defendants contend that Defendants' employment practices
14 complied with all applicable Labor laws.

15 For example, Defendants argued that all work time was paid for and that the
16 regular rate calculation was lawful. Defendants contend that their meal and rest period
17 policies fully complied with California law and that Defendants' timekeeping system
18 recorded meal periods, and was not required to record rest periods. Defendants argued
19 that the California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th
20 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability.
21 Defendants argued that any late or short meal periods were the voluntary decision of the
22 employee, and not the result of a failure of Defendants to provide a meal or rest period.
23 Defendants also argue that based on their facially lawful practices, they acted in good
24 faith and without willfulness, which if accepted would negate the claims for waiting time
25 penalties and/or inaccurate wage statements. In fact, under the current state of the law,
26 it is questionable whether these penalties could be awarded at all based upon the alleged
27 meal and rest period violations as several Courts have held that meal and rest period
28 violations do not give rise to wage statement or waiting time penalties. See e.g. *Ling v.*

1 *P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). Finally,
2 Defendants assert defenses to the amount of damages claimed and the imposition of any
3 penalties. If successful, Defendants' defenses could eliminate or substantially reduce
4 any recovery to the Class. While Plaintiff believes that these defenses could be
5 overcome, Defendants maintain these defenses have merit and therefore present a serious
6 risk to recovery. Decl. Nordrehaug at ¶23.

7 Moreover, there was also a significant risk that, if the Action was not settled,
8 Plaintiff would be unable to obtain class certification and maintain a certified class
9 through trial or demonstrate that his PAGA claim is manageable, and thereby not recover
10 on behalf of any employees other than himself. Plaintiff is aware of cases where class
11 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App.
12 5th 885 (2019) (denying certification of meal and rest break claims). At the time of the
13 mediation, Defendants forcefully opposed the propriety of class certification and the
14 manageability of Plaintiff's PAGA claim, arguing that individual issues precluded such
15 findings. Further, as demonstrated by the California Supreme Court decision in *Duran*
16 *v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
17 overcome for a class-wide recovery even where the class has been certified. While other
18 cases have approved class certification in wage and hour claims, class certification in this
19 action would have been hotly disputed and was by no means a foregone conclusion.
20 Decl. Nordrehaug at ¶24.

21 Finally, the proposed method of distribution will be effective as payments will be
22 made automatically to every Participating Class Member, without the need to submit a
23 claim form. The Agreement sets forth all the terms of Settlement, and there are no other
24 agreements between the Parties that would need to be identified under Rule 23(e)(3).
25 Decl. Nordrehaug, ¶26.

26 After vigorous negotiations and recognizing the potential risks, the Parties agreed
27 to the settlement of \$1,750,000. As a federal district court held in *Glass*, where the
28 parties faced uncertainties similar to those here:

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

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

10 Here, the risk of further litigation is substantial.

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

13 The relief provided in the settlement will benefit all Class Members equally. The
14 settlement does not improperly grant preferential treatment to the Class Representative
15 or any individual segments of the Class. Each Class Member will be entitled to cash
16 payment based on the plan of allocation. The Settlement Share for each Participating
17 Member in the California Class will be determined based upon the weeks worked by that
18 individual. Decl. Nordrehaug at ¶14. Plaintiff will apply to the Court for a service award
19 in consideration for his service and for the risks undertaken on behalf of the Class
20 Members and the Aggrieved Employees. Plaintiff performed his duties admirably by
21 working with Class Counsel. See Decl. Nordrehaug at ¶28. At this stage, the requested
22 Plaintiff's service award is well within the accepted range of awards for purposes of
23 preliminary approval.³ The Declaration of Nordrehaug at ¶32 provides a long list of

24 ³See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
25 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
26 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
27 (approving \$10,000 service award where class member recovery was \$375); *Louie v.*
28 *Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding
\$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
Fin. Servs., 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award
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 courts across California and the Ninth Circuit which have awarded service awards in the
2 amount of \$10,000 or higher, thus establishing that the requested service award in this
3 matter is “within the range of reasonableness”, subject to a final determination by this
4 Court at final approval.

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

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

1 a. The Strength of Plaintiff's Case

2 The Court should “evaluate objectively the strengths and weaknesses inherent in
3 the litigation and the impact of those considerations on the parties' decisions to reach
4 these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 975 (E.D. Cal.
5 2012) (citation omitted). In so doing, however, the Court does “not reach 'any
6 conclusions regarding the contested issues of fact and law that underlie the merits of
7 th[e] litigation.’” *Brewer v. Salyer*, 2017 U.S. Dist. LEXIS 101374, 2017 WL 2813178,
8 at *3 (E.D. Cal. 2017).

9 Here, Defendants deny all allegations of wrongdoing and allege numerous
10 affirmative defenses relating not only to Plaintiff's claims, but also to class certification.
11 Defendants assert facts that could negate essential elements of Plaintiff's claims.
12 Defendants contend, for example, that their employees were able to take meal and rest
13 breaks. Further, there could be significant problems of proof regarding the extent to
14 which Class Members and Aggrieved Employees allegedly missed meal and rest breaks
15 during the Class Period. Decl. Nordrehaug at ¶23. Plaintiff's willingness to settle this
16 action at a discount to the maximum estimated recovery is not suspect or improvident in
17 light of such considerations. This factor weighs in favor of approval.

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

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

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

1 breaks and was not paid wages. In addition to increasing the complexity, expense and
2 duration of this litigation, the accumulation of individualized issues would raise a risk
3 of 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 \$1,750,000 represents more than 27% of the
11 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, ¶22.

14 d. The Extent of Investigation Completed

15 Class Counsel has conducted a thorough investigation into the facts of the class
16 action. Plaintiff obtained a production of documents and data points from the Defendant.
17 In advance of mediation, Defendants also provided information necessary for Class
18 Counsel to intelligently negotiate a settlement. Decl. Nordrehaug at ¶26. Class Counsel
19 engaged in a thorough review and analysis of the relevant documents and data with the
20 assistance of an expert, Berger Consulting. Accordingly, the agreement to settle did not
21 occur until Class Counsel possessed sufficient information to make an informed
22 judgment regarding the likelihood of success on the merits and the results that could be
23 obtained through further litigation. Decl. Nordrehaug at ¶26.

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

1 and data and their own independent investigation and evaluation, Class Counsel is of the
2 opinion that the settlement with Defendants for the consideration and on the terms set
3 forth in the Agreement is fair, reasonable, and adequate, and is in the best interest of the
4 Class Members and in light of all known facts and circumstances, including the risk of
5 significant delay, defenses asserted by Defendants, and numerous potential appellate
6 issues. There can be no doubt that Counsel for the Parties possessed sufficient
7 information to make an informed judgment regarding the likelihood of success on the
8 merits and the results that could be obtained through further litigation. Decl. Nordrehaug
9 at ¶27.

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

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

19 2007 U.S. Dist. LEXIS 8476 at *14.

20 As in *Glass*, Plaintiff was in an equally sufficient position, and Plaintiff obtained
21 the necessary information, as well as conduct independent investigations, interviews and
22 due diligence to confirm the accuracy of the information supplied by Defendant.

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 are or
previously were employed by Defendants in California who were classified as non-
exempt employees during the Class Period." (Agreement at ¶ I(C).)

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

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

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

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

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

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

20 Rule 23(a) merely requires that the class be "so numerous that joinder of all
21 members is impracticable." Fed. R. Civ. Proc. 23(a). "Courts have routinely found the
22 numerosity requirement satisfied when the class comprises 40 or more members."
23 *EEOC v. Kovacevich "5" Farms*, 2007 U.S. Dist. LEXIS 32330 at *57 (E.D. Cal. 2007);
24 see also *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *Ansari v. New*
25 *York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998). Here, the Class is composed of
26 approximately 768 individuals in the Class, which Plaintiff contends is sufficiently
27 numerous for settlement purposes. Decl. Nordrehaug at ¶28.

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

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

8 Here, Plaintiff contends that common questions of law and fact are present,
9 specifically the common questions of whether Defendants' employment practices were
10 lawful, whether Defendants miscalculated the regular rate when paying overtime,
11 whether Defendants failed to properly provide and/or pay for meal and rest periods,
12 whether the Defendants failed to provide reimbursement of cell phone expenses, whether
13 Defendants' conduct was willful, and whether the Class is entitled to compensation and
14 related penalties. Plaintiff contends that certification of this Class is appropriate because
15 Defendants purportedly engaged in uniform practices with respect to the Class Members.
16 As a result, these common questions of liability could be answered on a class wide basis.
17 Decl. Nordrehaug at ¶28. While Defendants dispute that the commonality requirement
18 may be satisfied for purposes of litigation, Defendants do not oppose such a finding for
19 purposes of this Settlement only.

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

21 The typicality requirement of Rule 23(a) requires that the members of the class
22 have the same or similar claims as the named plaintiff. "The typicality requirement is
23 met when the claims of the named plaintiff arise from the same event or are based on the
24 same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In
25 *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
26 "[u]nder the rule's permissive standards, representative claims are 'typical' if they are
27 reasonably coextensive with those of absent class members; they need not be
28 substantially identical." 150 F.3d at 1020. Typicality "does not mean that the claims of

1 the class representative[s] must be identical or substantially identical to those of the
2 absent class members." *Stanton, supra*, at 957.

3 In the instant case, Plaintiff contends that the typicality requirement is fully
4 satisfied. Plaintiff, like every other member of the Class, was employed by Defendants
5 as non-exempt employee, and, like every other member of the Class, was subject to the
6 same employment practices concerning wages, meal and rest periods, and expense
7 reimbursement. Plaintiff, like every other member of the Class, also claims owed
8 compensation as a result of the Defendants' uniform policies and practices. Thus, the
9 claims of Plaintiff and the members of the Class arise from the same course of conduct
10 by Defendants, involve the same issues, and are based on the same legal theories. Decl.
11 Nordrehaug at ¶ 28. The typicality requirement of Rule 23 is met as to the common
12 issues presented. While Defendants dispute the typicality requirement may be satisfied
13 for purposes of litigation, Defendants do not oppose a finding of typicality for purposes
14 of this Settlement only.

15
16 **E. The Class Representative Has Fairly And Adequately Protected
The Interests Of The Class**

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

1 the prosecution of the Action and the monetary settlement reached. Decl. Nordrehaug
2 at ¶28. Second, Plaintiff retained competent counsel with extensive experience in class
3 actions. See Decl. Nordrehaug at ¶29 and Exhibit #2. Third, there is no antagonism
4 between the interests of Plaintiff and those of the Class. Both Plaintiff and the Class
5 Members seek monetary relief under the same set of facts and legal theories. Under such
6 circumstances, there can be no conflicts of interest, and adequacy of representation is
7 presumed. *In re Wirebound Boxes Antitrust Lit.*, 128 F.R.D. 268 (D. Minn. 1989).
8 While Defendants dispute that the adequacy requirement may be satisfied for purposes
9 of litigation, Defendants do not oppose such finding for this Settlement only.

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

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

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

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

25 Here, Plaintiff contends that the adjudication of the common issues surrounding
26 Defendants' uniform and systematic employment policies applicable to non-exempt
27 employees could establish Defendants' liability on a class-wide basis. Plaintiff contends
28 that Defendants engaged in a uniform course of failing to properly pay for wages,

1 provide meal/rest periods and provide expense reimbursement, which resulted in a
2 systematic failure to provide compensation as required by law and that Defendants'
3 policies with respect to these issues are uniform. The only question is whether
4 Defendants' conduct supports a meritorious claim for liability. Accordingly, Plaintiff
5 maintains that the common issues of law and fact present in this case predominate. Decl.
6 Nordrehaug at ¶ 28. While Defendants dispute that the predominance requirement may
7 be satisfied for purposes of litigation, Defendants do not oppose such a finding for
8 purposes of this Settlement only.

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

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

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

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

1 The Class Notice further explains the options for Class Members as to
2 participation, opt outs and objections. Decl. Nordrehaug at ¶30. The Class Notice also
3 informs Class Members and Aggrieved Employees about the release applicable to them.
4 This notice program was designed to meaningfully reach the largest possible number of
5 potential Class Members, satisfies the requirements of due process, and is the best notice
6 practicable under the circumstances and constitutes due and sufficient notice to all
7 persons entitled thereto. Decl. Nordrehaug at ¶31. This notice satisfies the content
8 requirements for notice following the exemplar class notice in the *Manual for Complex*
9 *Litigation*, Second §41.43. This notice also fulfills the requirement that class notices be
10 neutral. *Newberg*, at §8.39.

11 **VIII. CONCLUSION**

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

20 Dated: October 29, 2021 BLUMENTHAL NORDREHAUG BHOWMIK
21 DE BLOUW LLP

22 By: /s/ Norman Blumenthal
23 Norman B. Blumenthal
24 Kyle R. Nordrehaug
25 Attorneys for Plaintiff
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