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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

JONATHAN SANTIAGO, individually,
and on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act,

Plaintiff,

vs.

CIGNA HEALTH & LIFE INSURANCE
COMPANY, an unknown business entity;
and DOES 1 through 100, Inclusive,

Defendants.

ADRIAN AVILA, individually, and on
behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act,

Plaintiff,

vs.

CIGNA HEALTH & LIFE INSURANCE
COMPANY, an unknown business entity;
and DOES 1 through 100, Inclusive,

Defendants

Case No.: **VCU283599**
Consolidated for All Purposes with
Case No. VCU284920

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

Hearing Date: April 28, 2022
Hearing Time: 8:30 a.m.
[Hearing set at CMC on March 3, 2022]

Dept: 1
Judge: Hon. David C. Mathias

Lead Action Filed: July 15, 2020
Trial Date: None set

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1 **I. INTRODUCTION**

2 Plaintiffs Jonathan Santiago and Adrian Avila (“Plaintiffs”) respectfully submit this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendant Cigna Health & Life Insurance Company (“Defendant”), and seek entry of
5 an order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2)
6 for settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals
7 who are or were employed by Defendant Cigna Health & Life Insurance Company in California who
8 were classified as non-exempt employees during the Class Period” of August 19, 2016 to January 21,
9 2022; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally
10 appointing Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC. and
11 Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik
12 De Blouw LLP as Class Counsel for the Class; (5) approving the form and method for providing
13 class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7)
14 appointing ILYM Group as Settlement Administrator, and (8) scheduling a final approval hearing date
15 to consider Plaintiffs’ motion for final approval of the settlement and entry of the Judgment, and
16 Plaintiffs’ motion for approval of attorneys' fees and expenses.

17 Plaintiffs and Defendant (collectively the “Parties”) have reached a full and final settlement of
18 the above-captioned consolidated actions, as well as Plaintiff Jonathan Santiago's putative class action
19 case entitled *Santiago v. Cigna Health & Life Insurance Company*, Tulare County Superior Court Case
20 No. VCU284004 (“Santiago Class Action”) which was filed on August 19, 2020, and removed to
21 United States Federal District Court for the Eastern District of California and assigned Case No.
22 1:20-CV-01413-JLT-SKO on October 5, 2020 (collectively, the “Action”)¹, which is embodied in the
23

24
25 ¹ Plaintiff Jonathan Santiago and Defendant will be filing a Joint Stipulation Granting Plaintiff
26 Santiago Leave to File First Amended Class Action Complaint for Damages & Enforcement Under the
27 Private Attorneys General Act, California Labor Code § 2698, Et Seq. in this action, effectively
28 consolidating the Santiago Class Action with the above-captioned consolidated Private Attorneys
General Act case entitled *Santiago v. Cigna Health & Life Insurance Company* (Case No. VCU283599)
(the "Santiago PAGA Action"), prior to the hearing on the Plaintiffs' motion for preliminary approval
of settlement, as contemplated by the Agreement. (Agreement at ¶ III (45).)

1 Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court.² A
2 copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug
3 ("Decl. Nordrehaug"), served and filed herewith.

4 As consideration for this Settlement, the Gross Settlement Amount is Three Million Nine
5 Hundred Twenty-Five Thousand Dollars (\$3,925,000) to be paid by Defendant, as set forth in the
6 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
7 Parties and will be made in full and final settlement of the Released Class Claims. The Gross
8 Settlement Amount includes all payments of Settlement Shares to the Participating Class Members,
9 Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses
10 Payment, Class Representative Service Payments to Plaintiffs, and the PAGA Payment. The Gross
11 Settlement Amount does not include the employer's share of payroll taxes which will be separately paid
12 by Defendant. The Settlement is all-in with no reversion to Defendant and no need to submit a claim
13 form. Decl. Nordrehaug at ¶3.

14 On January 14, 2021, the Parties participated in an all-day mediation presided over by Mark
15 Rudy, a respected mediator of wage and hour representative and class actions. Following the
16 conclusion of the mediation, the Parties continued to engage in settlement negotiations, and ultimately
17 were able to agree to settle the Action based upon a mediator's proposal which was memorialized in
18 a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and
19 adequate, and should be preliminarily approved because there is a substantial monetary payment, and
20 there are substantial litigation and class-certification risks. Therefore, Plaintiffs respectfully request
21 that this Court grant preliminary approval of the Agreement and enter the proposed order submitted
22 herewith.

23 **II. DESCRIPTION OF THE SETTLEMENT**

24 The Gross Settlement Amount is Three Million Nine Hundred Twenty-Five Thousand Dollars
25 (\$3,925,000). (Agreement at ¶ I(20).) Under the Settlement, the Gross Settlement Amount consists of
26 the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees
27

28 ² Capitalized terms shall have the same meaning as defined in the Agreement.

1 Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses;
2 (4) Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Payment. (Agreement
3 at ¶ I(20).) The Gross Settlement Amount does not include Defendant's share of payroll taxes.
4 (Agreement at ¶ III(46).) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
5 (Agreement at ¶ III(46).) Decl. Nordrehaug at ¶15.

6 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
7 Defendant's share of payroll taxes within fifteen (15) business days of the Effective Date. (Agreement
8 at ¶ III(50)(h).) The Settlement Shares to Participating Class Members will be mailed by the Settlement
9 Administrator within fifteen (15) business days after the funding of the Gross Settlement Amount.
10 (Agreement at ¶ III(50)(h).) Decl. Nordrehaug at ¶16.

11 The Net Settlement Amount shall equal the net amount available for payment to the Class after
12 deducting the Court-approved amounts for the Class Representative Service Payments, the Class
13 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
14 Settlement Administration Expenses. (Agreement at ¶ I(23).) The Net Settlement Amount will be
15 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
16 ("Participating Class Members"). (Agreement at ¶¶ I(30) and III(48).) The Settlement Share will be
17 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
18 total number of Workweeks to determine a dollar amount per week ("Weekly Rate"); and (b) the
19 Settlement Administrator shall then take the Workweeks worked by each Participating Class Member
20 and multiply it by the Weekly Rate to calculate their Settlement Share. A "Workweek" is any week in
21 which any work was performed during the Class Period, but not weeks where no work was performed
22 (e.g., the Participating Class Member was on leave). (Agreement at ¶ III(48)(b).) Workweeks will be
23 based on Defendant's records, however, Class Members will have the right to challenge the number
24 of workweeks. Decl. Nordrehaug at ¶17.

25 Class Members may choose to opt-out of the Settlement by following the directions in the Class
26 Notice. (Agreement at ¶ III(50)(c)(iii) and Ex. A.) All Class Members who do not "opt out" will be
27 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
28 receive a Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their

1 allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims,
2 regardless of their request for exclusion. (Agreement at ¶ III(50)(c)(iii).) Finally, the Class Notice will
3 also advise the Class Members of their right to object to the Settlement and/or dispute their workweeks.
4 (Agreement at ¶ III(50)(c)(i)-(ii), Ex. A.) Decl. Nordrehaug at ¶18.

5 A Participating Class Member must cash his or her Settlement Share check within 180 days
6 after it is mailed. (Agreement at ¶III(50)(i).) The Settlement Administrator will send a reminder to
7 Participating Class Members who have not cashed their checks within 120 days after its last mailing
8 to the affected individual. (Agreement at ¶ III(50)(i).) Any settlement checks not cashed within 180
9 days will be voided and any funds from such uncashed checks will be paid to the California State
10 Controller's Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at
11 ¶ III(50)(i).) Decl. Nordrehaug at ¶19.

12 Following the receipt of bids from qualified vendors, the Parties have agreed to use ILYM
13 Group as the Settlement Administrator. (Agreement at ¶ III(49).) From the Gross Settlement Amount,
14 the Settlement Administrator shall be paid for the expenses of administering the Settlement in an
15 amount not to exceed \$30,000. (Agreement at ¶ III(47)(d).) Decl. Nordrehaug at ¶20.

16 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
17 to exceed Thirty-five percent (35%) of the Gross Settlement Amount (i.e. \$1,373,750 if the Gross
18 Settlement Amount remains \$3,925,000), as the Class Counsel Fees Payment. (Agreement at ¶
19 III(47)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
20 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ III(47)(b).) Subject
21 to Court approval, the Agreement provides for a payment of no more than \$7,500 each to the Plaintiffs
22 as the Class Representative Service Payments. (Agreement at ¶ III(47)(a).) The Class Counsel Fee
23 Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments
24 shall all be paid from the Gross Settlement Amount. Decl. Nordrehaug at ¶21.

25 The Parties will seek approval from the Court for the PAGA Payment of \$150,000 out of the
26 Gross Settlement Amount, which shall be allocated 75% (\$112,500) to the LWDA as the LWDA's share
27 of the PAGA Payment pursuant to PAGA and 25% (\$37,500) will be distributed to the Aggrieved
28 Employees based on their respective weeks worked during the PAGA Period. (Agreement at ¶

1 III(47)(c.) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
2 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement
3 at ¶ III(47)(c.) As set forth in the accompany proof of service, the LWDA has been served with this
4 motion and the Agreement. Decl. Nordrehaug at ¶22.

5 **III. CASE BACKGROUND**

6 The description of the cases and claims, along with the procedural history are set forth in the
7 Declaration of Kyle Nordrehaug at ¶¶ 7-14, and Declaration of Edwin Aiwazian filed concurrently
8 herewith ("Aiwazian Decl.") at ¶¶ 8-20. The Parties engaged in thorough investigation and the
9 exchange of documents and information in connection with the Action over more than two years which
10 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
11 14, Aiwazian Decl., ¶¶ 12-20. The Parties participated in mediation on January 14, 2021 with Mark
12 Rudy, which after arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12
13 Aiwazian Decl., ¶14.

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

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

23 Preliminary approval is the first of three steps that comprise the approval procedure for
24 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
25 members. The third step is a final settlement approval hearing, at which evidence and argument
26 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
27 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
28

1 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

24 In considering a potential settlement for preliminary approval purposes, the trial court does not

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

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

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

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

28 If the proposed settlement appears to be the product of serious, informed, noncollusive

1 negotiations, has no obvious deficiencies, does not improperly grant preferential
2 treatment to class representatives or segments of the class, and falls within the range of
3 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.

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

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

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

8 This settlement is the result of extensive and hard-fought litigation as well as negotiations
9 before an experienced and well-respected mediator. Defendant has expressly denied and continue to
10 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
11 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
12 Class Claims of the Class in accordance with this Settlement.⁴

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

22 The Parties attended an arms-length mediation session with Mark Rudy, a respected and
23 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation

24
25 ⁴ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
26 Claims" are "all claims pled or that could have been pled based on the factual allegations contained in
27 the Operative Complaint which occurred during the Class Period, for violations of Labor Code sections
28 §§ 210, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802 and IWC
Wage Order Nos. 1 and 4, and expressly excluding all other claims, including claims for vested
benefits, wrongful termination, unemployment insurance, disability, social security, and workers'
compensation, claims outside of the Class Period". (Agreement at ¶ III(51)(a).)

1 for the mediation, Defendant provided Class Counsel with necessary information for the members of
2 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiff
3 analyzed the data, and prepared and submitted a mediation brief and damage valuation to the Mediator.
4 At the conclusion of the all-day mediation, the Parties agreed to this Settlement. The final settlement
5 terms were negotiated and set forth in the Agreement now presented for this Court's approval.
6 Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.
7 Decl. Nordrehaug at ¶ 5; Aiwazian Decl., ¶25.

8 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
9 Three Million Nine Hundred Twenty-Five Thousand Dollars (\$3,925,000). The Settlement is all-in
10 with no reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

11 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
12 the course of the litigation, Class Counsel has diligently evaluated the Class Members' claims against
13 Defendant. Prior to the settlement negotiations, counsel for Defendants provided Class Counsel with
14 access to necessary information for the Class. In addition, Class Counsel previously negotiated
15 settlements with other employers in actions involving nearly identical issues and analogous defenses.
16 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
17 Counsel believes that the settlement with Defendants on the terms set forth in the Agreement is fair,
18 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
19 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
20 appellate issues. Decl. Nordrehaug at ¶ 14; Aiwazian Decl., ¶25.

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

28 Here, there can be no dispute that the litigation has been hard-fought with aggressive and

capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

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

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ III(48)(b).) For the 1,423 individuals in the Class who collectively worked 223,869 Workweeks, the Gross Settlement Amount provides an average value of \$2,758 per Class Member and \$17.53 per workweek, and after deductions, the Net Settlement Amount provides an average recovery of \$1,634 per Class Member and \$10.39 per work week. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated in advance of mediation. For the individuals whose claims are at issue in this Action, Plaintiffs analyzed the data for putative class members and determined the potential maximum damages for the class claims. For the Class, Plaintiffs determined that the maximum potential unpaid overtime was \$2,185,311, the maximum potential meal period damages were estimated to be \$8,085,651, the maximum rest period damages were estimated to be \$8,085,651, and the maximum damages for unreimbursed expenses were estimated to be \$469,040 based upon cell phone expense of \$10 per month. In total, the damages for the Class were calculated to have a maximum total value of \$18,825,653. In addition, Plaintiffs calculated that the maximum value of the waiting time penalties were \$2,289,492, and the maximum value of the wage statement penalties were \$3,248,500, however, these wage statement and waiting time penalties claims potentially have a much smaller value, even if damages were awarded, to the extent that they are only derivative of the meal and rest break claims.⁵ Defendant disputes Plaintiffs’ estimates and believes the amount they can recover

⁵ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, Plaintiffs recognized that these claims were subject to various defenses asserted by Defendant,

1 for themselves and the Class, if anything at all, is actually much lower. Decl. Nordrehaug, ¶6.

2 Consequently, the Gross Settlement Amount represents more than 20% of the value of the
3 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
4 proven in full at trial.⁶ The above maximum calculations should then be adjusted in consideration for
5 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
6 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
7 certainly fair and reasonable.⁷ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

8 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
9 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
10 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
11 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
12 argued that all work time was recorded and paid. Defendant contends that their meal and rest period
13 policies fully complied with California law and that although Defendant's timekeeping system recorded
14 meal periods, all meal periods were provided. Further, Defendant argued that Defendant was not
15 required to record rest periods and that there was no evidence that rest periods were not provided given

16
17 including, but not limited to, a good faith dispute defense as to whether any premium wages for meal
18 or rest periods or other wages were owed given Defendant's position that Plaintiffs were properly
19 compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no
20 willful failure to pay wages if the employer and employee have a good faith dispute as to whether and
21 when the wages were due."). Additionally, Courts have held that violations of the meal and rest period
22 regulations, which require payment of a "premium wage" for each improper meal period, do **not** give
23 rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal. App.
24 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018).
25 As a result, the viability of Plaintiff's claims on these theories is uncertain.

26
27 ⁶ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
28 PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

29
30 ⁷ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
31 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
32 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
33 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
34 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
35 Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
36 *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
37 action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 the facially lawful policies. Finally, Defendant could argue that the Supreme Court decision in *Brinker*
2 *v. Superior Court*, 53 Cal. 4th 1004 (2012), weakens Plaintiff's claims, on liability, value, and class
3 certifiability as to the meal and rest period claims. Defendant also argues that based on their facially
4 lawful practices, they acted in good faith and without willfulness, which if accepted would negate the
5 claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of
6 the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal
7 and rest period violations. If successful, Defendant's defenses could eliminate or substantially reduce
8 any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
9 maintain these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
10 Nordrehaug, ¶ 24.

11 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
12 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
13 Defendant argued that the individual experience of each putative class member varied with respect to
14 the claims. Defendant could also contest class certification by arguing injury and good faith were case
15 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
16 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
17 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
18 contended that individual differences in work experiences not only impacted damages but would also
19 impact certification. Finally, even if class certification was successful, as demonstrated by the
20 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
21 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
22 While other cases have approved class certification in wage and hour claims, class certification in this
23 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
24 ¶ 25.

25 After arm's length negotiations between experienced and informed counsel, the Parties
26 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
27 \$3,925,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

28 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,

1 and likely duration of further litigation likewise favors the settlement. Regardless of
2 how this Court might have ruled on the merits of the legal issues, the losing party likely
3 would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement.'"

4 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
5 (9th Cir. 2000)).

6 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 7 **Class Representatives or Segments Of The Class**

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

13 Plaintiffs will apply to the Court for a Class Representative Service Payment in consideration
14 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(47)(a).)
15 Plaintiffs performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
16 At this stage, the requested service award amount of \$7,500 each is well within the accepted range of
17 awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
18 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
19 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
20 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
21 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
22 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
23 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
24 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
25 representatives to compensate the employees for the time and effort expended on the case, for the risk
26 of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive
27 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

1 The stage of the proceedings at which this Settlement was reached also militates in favor of
2 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
3 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
4 Members' claims before the Action was filed. Class Counsel engaged in extensive formal discovery
5 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
6 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
7 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
8 possessed sufficient information to make an informed judgment regarding the likelihood of success on
9 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

20 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
21 observed, however, "[i]n the context of class action settlements, 'formal discovery is not
22 a necessary ticket to the bargaining table' where the parties have sufficient information
23 to make an informed decision about settlement."

24 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
25 213 F.3d at 459).

26 Here, Class Counsel was in far superior position to evaluate the fairness of this Settlement
27 because Class Counsel performed formal discovery, received all necessary information which was
28 analyzed, and also performed independent investigations and due diligence to confirm the accuracy of
the information supplied by Defendant.

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

2 Plaintiffs contend that the proposed settlement meet all of the requirements for class
3 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
4 Court may appropriately approve the Class as defined in the Agreement. This Court should
5 conditionally certify the Class for settlement purposes only, defined as follows:

6 All individuals who are or were employed by Defendant Cigna Health & Life Insurance
7 Company in California who were classified as non-exempt employees during the Class
Period.

8 (Agreement at ¶ I(3).)

9 The “Class Period” is August 19, 2016 to January 21, 2022. (Agreement at ¶ I(10).)

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

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

14 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
15 of a common or general interest, of many persons, or when the parties are numerous,
and it is impracticable to bring them all before the court....” The party seeking
16 certification has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The
17 “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.

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

19 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
20 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
21 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
22 settlement only. (Agreement at ¶ II(43).)

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

24 Plaintiffs bring this action on behalf of a Class of individuals during the applicable Class Period.
25 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
26 determined through examination of Defendant’s files. Given that the Class consists of approximately
27 1,423 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
28

44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 1,423 current and former employees that comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

C. Common Issues of Law and Fact Predominate

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

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

Here, Plaintiffs contend that common questions of law and fact are present, and specifically the common questions of whether Defendant properly compensated for alleged overtime, whether the Defendant failed to provide meal and rest periods, whether class members were lawfully compensated for all hours worked, whether Defendant failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

The typicality requirement requires the Plaintiffs to demonstrate that the members of the class have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth

1 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
2 reasonably coextensive with those of absent class members; they need not be substantially identical.”

3 In the instant case, Plaintiffs contend that there can be little doubt that the typicality requirement
4 is satisfied. The Plaintiffs, like every other member of the Class, worked for Defendant as non-exempt
5 employee during the Class Period. Plaintiffs contend that, like every other member of the Class, they
6 were subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
7 Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same course of
8 conduct by the Defendant, involve the same employment policies and practices of Defendant, and are
9 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert
10 that the typicality requirement is met as to the common issues presented in this case. Defendants do
11 not oppose a finding of typicality for purposes of this Settlement only.

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

13 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs
14 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
15 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
16 met here. First, Plaintiffs are well aware of their duties as the representatives and have actively
17 participated in the prosecution of this case to date. They effectively communicated with counsel,
18 provided documents to counsel and participated in the investigation and negotiations in the Action.
19 Second, Plaintiffs retained competent counsel who are experienced in employment class actions and
20 who have no conflicts. Decl. Nordrehaug at ¶ 31; Aiwazian Decl. at ¶¶ 2-7. Third, there is no
21 antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the
22 Class Members seek monetary relief under the same set of facts and legal theories. Defendants dispute
23 that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this
24 Settlement only.

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

26 To certify a class, the Court must also determine that a class action is superior to other available
27 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
28 common issues will reduce litigation costs and promote greater efficiency, a class action may be

1 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
2 1996). As courts have previously observed:

3 Absent class treatment, each individual plaintiff would present in separate, duplicative
4 proceedings the same or essentially the same arguments and evidence, including expert
5 testimony. The result would be a multiplicity of trials conducted at enormous expense
6 to both the judicial system and the litigants. “It would be neither efficient nor fair to
7 anyone, including defendants, to force multiple trials to hear the same evidence and
8 decide the same issues.”

9 *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

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

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

14 The Court has broad discretion in approving a practical notice program. The Parties have
15 agreed upon procedures by which the Class Members will be provided with written notice of the
16 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
17 with the Agreement, Defendants will provide to the Settlement Administrator an electronic database
18 containing each Class Member’s Class Data. (Agreement at ¶ III(50)(b)(i).) Within 14 days after
19 receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class
20 Members via first-class U.S. Mail using the most current mailing address information available.
21 (Agreement at ¶ III(50)(b)(ii).) The Class Notice, drafted jointly and agreed upon by the Parties
22 through their respective counsel and to be approved by the Court, includes all relevant information. (See
23 Exhibit “A” to the Agreement.) The Class Notice will include, among other information: (i)
24 information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt
25 out; (iii) information to the Class Members regarding how to opt out and how to object to the
26 Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of
27 attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award requests; and
28 (vi) the anticipated expenses of the Settlement Administrator. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have sixty (60) days from the date that
the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement at

¶ III(50)(c.) In the event of a re-mailing, this deadline will be extended by an additional 15 days. 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(50)(c)(i).) 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).

VII. CONCLUSION

Plaintiffs respectfully request 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: April 15, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
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