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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 SARAH ARMSTRONG and ROBERT
16 WALLACE, individuals, on behalf of
17 themselves and on behalf of all persons
18 similarly situated,

19 Plaintiffs,

20 vs.

21 PROMETRIC LLC, a Limited Liability
22 Company, and DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No. 20STCV29967

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS, COLLECTIVE AND PAGA
SETTLEMENT**

Hearing Date: August 18, 2021
Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson
Dept: SS-17

Action Filed: August 7, 2020
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) respectfully submit this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed settlement
4 with Defendant Prometric LLC (“Defendant”), and seeks entry of an order: (1) preliminarily approving
5 the proposed settlement of this class, collective and PAGA action with Defendant; (2) for settlement
6 purposes only, conditionally certifying the Class, which is comprised of “all individuals employed by
7 Defendant in California as non-exempt employees at any time during the Class Period, but excluding
8 individuals who released Defendant from wage and hour claims for the Class Period, including those
9 wage and hour claims released as part of a general release of claims”; (3) for settlement purposes only,
10 conditionally certifying the Collective Members, which is comprised of “all individuals employed by
11 Defendant in California as non-exempt employees at any time during the Collective Period, but
12 excluding individuals who released Defendant from wage and hour claims for the Collective Period,
13 including those wage and hour claims released as part of a general release of claims”; (4) provisionally
14 appointing Plaintiffs as the representatives of the Class; (5) provisionally appointing Norman B.
15 Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De
16 Blouw LLP as Class Counsel for the Class; (6) approving the form and method for providing class-wide
17 notice; (7) directing that notice of the proposed settlement be given to the class; (8) appointing
18 Simpluris as Settlement Administrator, and (9) scheduling a final approval hearing date to consider
19 Plaintiffs' motion for final approval of the settlement and entry of the Judgment, and Plaintiffs' motion
20 for approval of attorneys' fees and expenses.

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

25 As consideration for this Settlement, the Maximum Gross Settlement Amount is Eight Hundred
26 Eighty Thousand Dollars (\$880,000) to be paid by Defendant, as set forth in the Agreement. The
27

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

1 Maximum Gross Settlement Amount will settle all issues pending in the Action between the Parties and
2 will be made in full and final settlement of the Released Class Claims, the Released FLSA Claims, and
3 the Released PAGA Claims. The Maximum Gross Settlement Amount includes all payments of
4 Individual Settlement Payments to the Participating Class Members, Settlement Administration
5 Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class
6 Representative Service Payments, and the PAGA Payment. The Maximum Gross Settlement Amount
7 does not include the employer's share of payroll taxes which will be separately paid by Defendant. The
8 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.
9 Nordrehaug at ¶3.

10 On March 3, 2021, the Parties participated in an all-day mediation session presided over by
11 David Rotman, Esq., a respected and experienced mediator of wage and hour class actions. Following
12 the mediation, the Parties, represented by their respective counsel, were able to reach agreement on the
13 terms of a settlement of the Action, with the settlement terms memorialized in a Memorandum of
14 Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should
15 be preliminarily approved because there is a substantial monetary payment, and there are substantial
16 litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant
17 preliminary approval of the Agreement and enter the proposed order submitted herewith.

18 **II. DESCRIPTION OF THE SETTLEMENT**

19 The Maximum Gross Settlement Amount is Eight Hundred Eighty Thousand Dollars
20 (\$880,000). (Agreement at ¶ I(T).) Under the Settlement, the Maximum Gross Settlement Amount
21 consists of the following elements: (1) payment of the Individual Settlement Payments to the Class; (2)
22 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Settlement
23 Administration Expenses; (4) Class Representative Service Payments to Plaintiffs; (5) the PAGA
24 Payment. (Agreement at ¶ III(B)-(C).) The Maximum Gross Settlement Amount does not include
25 Defendant's share of payroll taxes. (Agreement at ¶ III(A).) The Maximum Gross Settlement Amount
26 shall be all-in with no reversion to Defendant. (Agreement at ¶ III(A).) Decl. Nordrehaug at ¶15.

27 Following final approval, Defendant shall fund the Maximum Gross Settlement Amount within
28 fifteen (15) days of the Effective Date. (Agreement at ¶ III(E)(9).) The Individual Settlement

1 Payments to Participating Class Members will be mailed by the Settlement Administrator within thirty
2 (30) calendar days after the funding of of the Maximum Gross Settlement Amount. (Agreement at ¶
3 III(E)(9).) Decl. Nordrehaug at ¶16.

4 The Net Settlement Amount shall equal the net amount available for payment to the Class after
5 deducting the Court-approved amounts for the (1) the Class Counsel Fees Payment; (2) Class Counsel
6 Litigation Expenses Payment; (3) the PAGA Payment; (4) the Class Representative Service Payments;
7 and, (5) the Settlement Administration Expenses. (Agreement at ¶ I(V).) The Net Settlement Amount
8 will be distributed as the Individual Settlement Payments to the Class Members who do not timely
9 request exclusion (“Participating Class Members”). (Agreement at ¶¶ I(Z) and III(C)(1).) The
10 Individual Settlement Payment will be calculated as follows: (a) the Net Settlement Amount shall be
11 divided by the total Workdays for all Participating Class Members to determine the “Workday Payment
12 Amount”; and (b) the gross amount of each Participating Class Member’s Individual Settlement
13 Payment shall be calculated by multiplying the Participating Class Member’s individual Workday total
14 by the Workday Payment Amount. (Agreement at ¶ III(C)(1).) Workdays will be based on
15 Defendant’s records, however Class Members will have the right to challenge the number of Workdays.
16 Decl. Nordrehaug at ¶17.

17 Class Members may choose to opt-out of the Settlement by following the directions in the Class
18 Notice. (Agreement at ¶ III(E)(3), Ex. A.) All Class Members who do not "opt out" will be deemed
19 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
20 Individual Settlement Payment. An Aggrieved Employee will still be paid their allocation of the PAGA
21 Payment and will remain bound by the release of the Released PAGA Claims regardless of whether the
22 Aggrieved Employee is a Non-Participating Class Member. (Agreement at ¶ III(E)(3)(c).) Finally, the
23 Class Notice will also advise the Class Members of their right to object to the Settlement and/or dispute
24 their Workdays. (Agreement at ¶ III(E)(3), Ex. B.) Decl. Nordrehaug at ¶18.

25 A Participating Class Member must cash his or her Individual Settlement Payment check within
26 180 days after it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180
27 days will be voided and any funds from such uncashed checks will be paid *cy pres* to two recognized
28 501(c)(3) tax-exempt charities: (1) Bet Tzedek Legal Services and (2) Legal Aid at Work (the “*Cy Pres*

1 Recipients”). Such *cy pres* payments will be made in compliance with Code of Civil Procedure section
2 384. (Agreement at ¶ III(E)(12).) The Parties have verified that they do not have and connection or
3 relationship with the *Cy Pres* Recipients. Decl. Nordrehaug at ¶19.

4 After obtaining three quotes from mutually acceptable and qualified settlement administrators,
5 the Parties now request that Court appoint Simpluris as the Settlement Administrator to administer the
6 Settlement. (Agreement at ¶ III(D).) From the Maximum Gross Settlement Amount, the Settlement
7 Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed
8 \$15,000. (Agreement at ¶ III(B)(4).) Decl. Nordrehaug at ¶20.

9 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
10 to exceed one-third of the Maximum Gross Settlement Amount, as the Class Counsel Fees Payment.
11 (Agreement at ¶ III(B)(2).) Class Counsel will also be allowed to apply separately for an award of
12 Class Counsel Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶
13 III(C)(2).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
14 to each Plaintiff as their Representative Service Payments. (Agreement at ¶ III(B)(1).) Decl.
15 Nordrehaug at ¶21.

16 The Parties will seek approval from the Court for the PAGA Payment of \$30,000 out of the
17 Maximum Gross Settlement Amount, which shall be allocated 75% (\$22,500) to the LWDA as the
18 LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$7,500) will be distributed to the
19 Aggrieved Employees to be distributed pro rata based on their respective Workdays during the PAGA
20 Period. (Agreement at ¶ III(C)(3).) The Aggrieved Employees are defined the same as the Class but
21 are limited to the applicable PAGA Period of June 3, 2019 to July 3, 2021. (Agreement at ¶¶ I(B) and
22 I(Y).) The Released PAGA Claims are appropriately tethered to the allegations of the complaint.² As
23 set forth in the accompany proof of service, the LWDA has been served with this motion and the
24 Agreement. Decl. Nordrehaug at ¶22.

26 ² Released PAGA Claims are “any and all claims under the PAGA, that arise out of or relate to the
27 Released Class Claims and that accrued during the PAGA Period, including all claims for penalties,
28 interest, attorneys’ fees, costs and expenses, and other remedies available under PAGA”. (Agreement
at ¶ III(F)(3).)

1 **III. CASE BACKGROUND**

2 The description of the case and claims, along with the procedural history is set forth in the
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
4 exchange of documents and information in connection with the Actions over the course of litigation
5 which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10
6 and 14. The Parties participated in mediation on March 3, 2021 with David Rotman, Esq., which after
7 arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶¶ 11-12.

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

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

18 Preliminary approval is the first of three steps that comprise the approval procedure for
19 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
20 members. The third step is a final settlement approval hearing, at which evidence and argument
21 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
22 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
23 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

24 The primary question presented on an application for preliminary approval of a proposed class
25 action settlement is whether the proposed settlement is "within the range of possible approval."
26 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
27
28

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

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
23 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

25
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 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
2 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
3 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
4 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
5 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
6 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
7 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

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

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

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

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

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

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

9 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
10 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
11 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
12 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
13 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.

14 ⁴ The release applicable to the Class is tethered to allegations in the Action and the “Released Class
15 Claims” are “any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs,
16 liens, charges, complaints, expenses, attorneys’ fees, damages, liquidated damages, actions or causes
17 of action of whatever kind or nature, whether known or unknown, contingent or accrued, against the
18 Released Parties that accrued during the Class Period for Class Members, and that arise out of or relate
19 to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended
20 Complaint, or that could have been asserted in the First Amended Complaint based on the allegations
21 in the First Amended Complaint, whether in contract or based on putative violations of any federal,
22 state, city, or local law (the “Released Class Claims”). The Released Class Claims include all claims
23 arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages,
24 overtime, double time, or premium pay of any other kind, meal period violations, rest break violations,
25 wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the
26 failure to timely pay wages during employment and upon termination of employment, the failure to
27 reimburse employees for business expenses, all related claims for civil and statutory penalties, interest,
28 liquidated damages, attorneys’ fees, costs, and expenses, all claims under PAGA that could have been
premiered on the Released Class Claims, all claims under the California Business & Professions Code
section 17200 *et seq.* that could have been premised on the Released Class Claims, all claims under the
Fair Labor Standards Act, the California Labor Code, the applicable IWC Wage Orders, and any other
federal, state, city, or local law regarding wages and hours, including any and all claims arising from
the factual allegations in all complaints filed in the Action that the Class Members and Participating
Collective Members do not know or suspect to exist in their favor, which if known by them, would have
materially affected the Settlement and the release of the Released Parties. The Released Class Claims
exclude all other claims, including claims for vested benefits other than wages, 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.” (Agreement at ¶ III(F)(1).)

1 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
2 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
3 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

4 The Parties attended an arms-length mediation session with David Rotman, a respected and
5 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
6 for the mediation, Defendant provided Class Counsel with necessary information for the members of
7 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs
8 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
9 a mediation brief and damage valuation to the Mediator. At the conclusion of the all-day mediation,
10 the Parties agreed to this Settlement. The final settlement terms were negotiated and set forth in the
11 Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs
12 and Class Counsel believe that this Settlement is fair, reasonable and adequate.

13 As consideration for this Settlement, the Maximum Gross Settlement Amount to be paid by
14 Defendant is Eight Hundred Eighty Thousand Dollars (\$880,000). The Settlement is all-in with no
15 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

26 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
27 trying these Actions against Defendant through possible appeals which could take several years. Class
28 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex

1 class actions such as these Action. Class Counsel is also mindful of and recognize the inherent
2 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
3 evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement
4 is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

12 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
13 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
14 receive payment according to the same formula. (Agreement at ¶ III(C)(2).) The Maximum Gross
15 Settlement Amount provides an average value of \$3,478 per Class Member and \$13 per Workday, and
16 after deductions, the Net Settlement Amount provides an average recovery of \$1,963 per Class Member
17 and \$7.82 per Workday. Decl. Nordrehaug, ¶6.

18 The calculations to compensate for the amount due to the Class Members at the time this
19 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
20 mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for
21 putative class members and determined the potential maximum damages for the class claims. For the
22 Class, Plaintiffs determined that the potential underpaid overtime due to the miscalculation of the
23 regular rate was \$2,203, the off-the-clock damages for preliminary activities were \$280,373, the
24 maximum potential meal period damages were estimated to be \$632,368 based on a maximum potential
25 61% violation rate observed in the time records, the maximum rest period damages were estimated to
26 be \$961,950 based upon a 100% violation rate for every shift, and the unreimbursed business expenses
27 were calculated to be a maximum of \$146,026 at \$30 per month for cell phone usage. In total, the
28 damages for the Class were calculated to have a maximum total value of \$2,022,920. In addition,

1 Plaintiffs calculated that the maximum value of the waiting time penalties were from \$65,769 to
2 \$328,847 and the maximum value of the wage statement penalties were from \$150,450 to \$307,000,
3 however, these wage statement and waiting time penalties claims potentially have a much smaller
4 value, even if damages were awarded, to the extent that they are derivative of the meal and rest break
5 claims.⁵ The valuation of the FLSA claim is subsumed within the class claims. Decl. Nordrehaug, ¶6.

6 Consequently, the Maximum Gross Settlement Amount of \$880,000 represents more than 43%
7 of the value of the potential maximum damages at issue for the Class in this case, assuming these
8 amounts could all be proven in full at trial.⁶ The above maximum calculations should then be adjusted
9 in consideration for both the risk of certification and the risk of establishing class-wide liability on all
10 claims. Given the amount of the Settlement as compared to the potential value of the claims, the
11 Settlement is most certainly fair and reasonable.⁷ Clearly, the goal of this litigation has been met. Decl.
12 Nordrehaug, ¶6.

13 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
15 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.

16
17 ⁵ Importantly, while Plaintiffs alleged claims for statutory penalties pursuant to Labor Code
18 Sections 203 and 226, Plaintiffs recognized that these claims were subject to various defenses asserted
19 by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium
20 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs were
21 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
22 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
23 and when the wages were due."). Additionally, Courts have held that violations of the meal and rest
24 period regulations, which require payment of a "premium wage" for each improper meal period, do **not**
25 give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal.
26 App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336
27 (2018). As a result, the viability of Plaintiffs' claims on these theories is uncertain.

28 ⁶ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
the PAGA claim in this discussion for the class claims. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

⁷ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial.")

1 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
2 argued that all work time was paid for and argued against the off the clock claiming computers will
3 always on so there would be no boot up time and that at the end of the day there were videos showing
4 any time spent after clocking out and before setting the alarm would have been mere seconds.
5 Defendant contends that its meal and rest period policies fully complied with California law and that
6 Defendant's timekeeping system recorded meal periods, and was not required to record rest periods.
7 Finally, Defendant argued that the recent Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
8 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal
9 and rest period claims. Defendant also argue that based on their facially lawful practices, they acted
10 in good faith and without willfulness, which if accepted would negate the claims for waiting time
11 penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is
12 questionable whether these penalties could be awarded at all based upon the alleged meal and rest
13 period violations. Finally, Defendant also contends that the use of a smartphone application for
14 correspondence did not require them to reimburse employee for personal cell phones. If successful,
15 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While
16 Plaintiffs believe that these defenses could be overcome, Defendant maintain these defenses have merit
17 and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

18 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
19 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
20 Defendant argued that the individual experience of each putative class member varied with respect to
21 the claims. Defendant could also contest class certification by arguing injury and good faith were case
22 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
23 certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
24 (2019) (denying certification of meal and rest break claims). Indeed, in the coordinate case of *Salazar*,
25 this Court denied class certification of similar claims. Defendant also contended that individual
26 differences in work experiences not only impacted damages but would also impact certification.
27 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
28 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to

1 overcome for a class wide recovery even where the class has been certified. While other cases have
2 approved class certification in wage and hour claims, class certification in this action would have been
3 hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

4 After arm's length negotiations between experienced and informed counsel, the Parties
5 recognized the potential risks and agreed on the Settlement with a Maximum Gross Settlement Amount
6 of \$880,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

13 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
14 (9th Cir. 2000)).

15 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 16 **Class Representatives or Segments Of The Class**

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

22 Plaintiffs will apply to the Court for Representative Service Payments in consideration for their
23 service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(C)(1).) Plaintiffs
24 performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. At this stage
25 and as detailed in the Decl Nordrehaug, the requested service awards of \$10,000 are well within the
26 accepted range of awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.)*,
27 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
28 payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D.
Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie v. 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,

1 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
2 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
3 representatives to compensate the employees for the time and effort expended on the case, for the risk
4 of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive
5 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

1 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
2 213 F.3d at 459).

3 Here, Class Counsel was in far superior position to evaluate the fairness of this Settlement
4 because Class Counsel received all necessary information which was evaluated with the assistance of
5 an expert, and also performed independent investigations and due diligence to confirm the accuracy of
6 the information supplied by Defendant.

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

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

12 All individuals employed by Defendant in California as non-exempt employees at any
13 time during the Class Period, but excluding individuals who released Defendant from
14 wage and hour claims for the Class Period, including those wage and hour claims
released as part of a general release of claims.

15 (Agreement at ¶ I(C).)

16 The “Class Period” is from August 7, 2016 to July 3, 2021. (Agreement at ¶ I(I).)

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

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

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

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

26 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
27 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
28 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of

1 settlement only. (Agreement at ¶ II(Q).)

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

3 Plaintiffs bring this action on behalf of a Class of individuals during the applicable Class Period.
4 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
5 determined through examination of Defendant's files. Given that the Class consists of approximately
6 253 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
7 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
8 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs
9 assert that the 253 current and former employees that comprise the Class can be identified based on
10 Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

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

23 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
24 common questions of whether the Defendant failed to provide meal and rest periods, whether class
25 members were lawfully compensated for all hours worked, whether Defendant correctly calculated the
26 regular rate when paying overtime, whether Defendant failed to reimburse necessary business expenses,
27 whether Defendant failed to provide accurate wage statements, whether Defendant failed to time pay
28 wages, 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 Circuit held that “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they need not be substantially identical.”

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

E. The Class Representation Fairly and Adequately Protected the Class

Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met here. First, Plaintiffs are well aware of their duties as the representatives and have actively participated in the prosecution of this case to date. They effectively communicated with counsel, provided documents to counsel and participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief

1 under the same set of facts and legal theories. Defendant disputes that the adequacy requirement is
2 satisfied but will not oppose such a finding for purposes of this Settlement only.

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

4 To certify a class, the Court must also determine that a class action is superior to other available
5 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
6 common issues will reduce litigation costs and promote greater efficiency, a class action may be
7 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
8 1996). As courts have previously observed:

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

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

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

19 **VI. THE FLSA COLLECTIVE SETTLEMENT**

20 The Settlement also provides for collective certification and settlement of the FLSA claims
21 predicated on the same conduct. The settlement of the FLSA collective action should be approved for
22 the same reasons as the class settlement. See *Villafan v. Broadpectrum Downstream Servs.*, 2020 U.S.
23 Dist. LEXIS 218152 (N.D. Cal. 2020).

24 The “Collective Members” are all individuals employed by Defendant in California as
25 non-exempt employees at any time during the Collective Period, but excluding individuals who released
26 Defendant from FLSA claims for the Collective Period, including those wage and hour claims released
27 as part of a general release of claims. (Agreement at ¶ I(K).) Thus, the only difference from the Class
28 is the shorter period of time covered by FLSA, which is the Collective Period of August 7, 2016 to July
3, 2021. (Agreement at ¶ I(I).) Therefore, the Collective Members may be certified as a FLSA
collective action pursuant to 29 U.S.C. § 216(b) for the same reasons as the certification of the Class.

1 See *Roe v. Jose Torres L.D. Latin Club Bar, Inc.*, 2020 U.S. Dist. LEXIS 156837 (N.D. Cal. 2020)
2 (explaining that standards for class certification satisfy the similarly situated standard under FLSA).

3 FLSA claims are brought as a “collective action” where employees affirmatively “opt-in” to the
4 litigation. *Tyson Foods, Inc. V. Bouaphakeo*, 136 S.Ct. 1036, 1043 (2016). Here, the Settlement
5 provides for a procedure through which Collective Members will affirmative opt in to the FLSA
6 collective action through the negotiation of their settlement check, which will have a limited
7 endorsement stating that by endorsing, negotiating and/or cashing the check, the Collective Member
8 is affirmatively consenting to opt into the lawsuit pursuant to 29 U.S.C § 216(b). (Agreement at ¶¶
9 I(AA) and III(E)(11)).⁸

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

11 The Court has broad discretion in approving a practical notice program. The Parties have
12 agreed upon procedures by which the Class Members will be provided with written notice of the
13 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
14 with the Agreement, Defendant will provide to the Settlement Administrator a confidential electronic
15 spreadsheet containing the Class Data. (Agreement at ¶ III(E)(1).) Within 14 days after receiving the
16 Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via
17 first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶

18
19 ⁸ For these Participating Collective Members, the FLSA release is tethered to the same allegations
20 in the complaint. The Released FLSA Claims are “any and all claims, debts, liabilities, demands,
21 obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys’ fees, damages,
22 liquidated damages, actions or causes of action of whatever kind or nature, whether known or unknown,
23 contingent or accrued, against the Released Parties that accrued during the Collective Period, and that
24 arise out of or relate to the allegations asserted in the First Amended Complaint, that are asserted in the
25 First Amended Complaint, or that could have been asserted in the First Amended Complaint based on
26 the allegations in the First Amended Complaint, whether in contract or based on putative violations of
27 the Fair Labor Standards Act or its interpreting regulations (the “Released FLSA Claims”). The
28 Released FLSA Claims include all claims arising from the factual allegations in the First Amended
Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure
to keep accurate payroll records, the failure to timely pay wages during employment and upon
termination of employment, and all related claims for civil and statutory penalties, interest, liquidated
damages, attorneys’ fees, costs, and expenses, including any and all claims arising from the factual
allegations in all complaints filed in the Action that the Participating Collective Members do not know
or suspect to exist in their favor, which if known by them, would have materially affected the
Settlement and the release of the Released Parties. (Agreement at ¶ III(F)(2).)

1 III(E)(2).)

2 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
3 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)

4 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
5 impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members
6 regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Settlement
7 Payment for each of the Class Members; (iii) the amount of attorneys’ fees and expenses to be sought;
8 (v) the amount of the Plaintiffs’ service award request; and (vi) the anticipated expenses of the
9 Settlement Administrator. The Parties agree that a Spanish translation is not required as all employees
10 in the Class are able to read and write in English. Decl. Nordrehaug at ¶32.

11 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
12 that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement
13 at ¶ III(E)(3).) If the Class Notice is re-mailed, the Response Deadline for that Class Member will be
14 extended by 15 days from the date of the original Response Deadline, and the extended Response
15 Deadline will be set forth in the re-mailed Class Notice. (Agreement at ¶ III(E)(2).) Class Members
16 shall be given the opportunity to object to the Settlement and/or requests for attorneys’ fees and
17 expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(E)(3).) Class Members who
18 do not submit a timely and proper request to opt-out will automatically receive a payment of their
19 Individual Settlement Payment. This notice program was designed to meaningfully reach the Class
20 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
21 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
22 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
23 3.769(f).

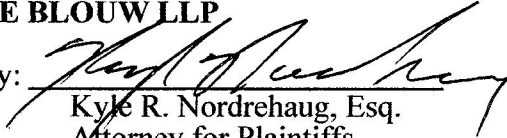
24 **VIII. CONCLUSION**

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

1 Dated: July 27, 2021

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

2
3 By:


4 Kyle R. Nordrehaug, Esq.
5 Attorney for Plaintiffs
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