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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

EZEKIEL H. TREZEVANT IV, an individual, on behalf of himself, and on behalf of all persons similarly situated, and on behalf of the State of California, as a private attorney general, Plaintiffs, vs. LEGENDS SALES & MARKETING, LLC, a Limited Liability Company; and Does 1 through 50, Inclusive, Defendants.	CASE NO.: **20STCV45378** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** Hearing Date: August 6, 2025 Hearing Time: 10:30 a.m. Judge: Hon. Carolyn B. Kuhl Dept: SS-12 Date Filed: November 24, 2020 Trial Date: Not set

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I. INTRODUCTION

Plaintiff Ezekiel H. Trezevant IV ("Plaintiff") respectfully submits this memorandum in support of the motion for preliminary approval of the proposed class action settlement with Defendant Legends Sales & Marketing, LLC ("Defendant") which seeks entry of an order: (1) preliminarily approving the proposed settlement of this class and PAGA action with Defendant Legends Sales & Marketing, LLC ("Defendant"); (2) confirming for settlement purposes only, the previously certified Class, which is comprised of "all individuals who are or previously were employed by Defendant in California as a Premium Sales Consultant or a Senior Sales Consultant at any time during the "Class Period", which is November 24, 2016 through March 19, 2024, who did not sign a severance agreement and who did not opt out of the Class Action; (3) confirming Plaintiff as the representative of the Class; (4) confirming Blumenthal Nordrehaug Bhowmik De Blouw LLP and the Webb Law Group as Class Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing Apex Class Action as Administrator, and (8) scheduling a final approval hearing date that is 120 days from preliminary approval, to consider Plaintiff's motion for final approval of the settlement and for approval of attorneys' fees, expenses and service award. Plaintiff and Defendant (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court.[1] A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug ("Decl. Nordrehaug"), served and filed herewith.

As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Nine Hundred Twenty-Five Thousand Dollars ($925,000) (the "Gross Settlement Amount") is to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be made in full and final settlement of the Released Class Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) the

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

Class Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

$925,000 (Gross Settlement Amount)
- $10,000 (Plaintiff's proposed service award - not to exceed amount)
- $75,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- $308,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- $20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- $5,000 (Administration Expenses Payment - not to exceed amount)

$506,667 (Net Settlement Amount)

Based upon 72 Class Members who collectively worked 12,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of $12,847 per Class Member and $77 per Workweek and after deductions, the Net Settlement Amount provides an average recovery of $7,037.04 per Class Member and a recovery of $42.22 per Workweek. Decl. Nordrehaug at ¶6.

On June 5, 2023, the Parties participated in an all-day mediation session presided over by Hon. Carl J. West (Ret.), a respected jurist and mediator of wage and hour representative and class actions. Although the matter did not settle at the June 5, 2023 mediation, each side, represented by its respective counsel, continued to negotiate through the assistance of Hon. Carl J. West (Ret.) and was ultimately able to agree to settle the Action based upon a mediator's proposal, which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable, and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Nine Hundred Twenty-Five Thousand Dollars ($925,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment allocated 75% to the LWDA PAGA Payment and 25% to the Individual PAGA Payments.

(Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

Defendant shall fund the Gross Settlement Amount and the amount necessary to pay payroll taxes thereon no later than 14 business days after the Effective Date. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees will be made within 14 days after Defendant funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

The amount remaining in the Gross Settlement Amount after the deduction of Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) The Administrator will calculate each Individual Class Payment by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will initially be based on Defendant's records, however, Class Members will have the right to challenge the number of Workweeks. Decl. Nordrehaug at ¶17.

Because this Class was previously certified, and class notice was already sent to the Class, this Settlement does not have an opt out procedure. All Class Members will be bound by the Settlement and will be entitled to receive an Individual Class Payment. (Agreement at ¶¶ 3.2(e) and 6.2.) All Aggrieved Employees will be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims. (Agreement at ¶ 6.3.) The Class Notice will advise the Class Members of their right to object to the class portion of the Settlement and/or dispute their Workweeks and/or Pay Periods. (Agreement at ¶¶ 8.5 and 8.6, and Ex. A.) Decl. Nordrehaug at ¶18.

Participating Class Members must cash their Individual Class Payment check within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any funds represented by such checks sent to the California Controller's Unclaimed Property

Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

Subject to Court approval, Apex Class Action is the qualified third party proposed to administer the settlement in this action (“Administrator”). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement administration in an amount not to exceed $5,000. (Agreement at ¶ 3.2(c).) Apex Class Action provided a capped estimate of $4,450 for administration expenses. Decl. Nordrehaug at ¶20.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed $75,000. (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than $10,000 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, *et seq.* (“PAGA”). The PAGA Penalties are $20,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to the express requirements of Labor Code § 2699(i), the Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties ($5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.[2] (Agreement at ¶ 3.2(d).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the

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[2] The PAGA claim was initiated prior to June 2024, and therefore the prior version of Labor Code ¶2699 applies to the 75/25 allocation.

exchange of documents and information in connection with the Action over more than four years which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. Significant discovery was performed and Plaintiff's contested motion for class certification was partially granted. The Parties participated in mediation on June 5, 2023 with Hon. Carl J. West (Ret.), which through arms' length negotiations continuing after the mediation, ultimately resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

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

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).[3] Preliminary approval is merely the prerequisite to giving notice so that "the proposed

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[3] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are 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).

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

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

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba, supra,* 91 Cal.App.4th at 234-235; *Dunk ,* 48 Cal.App.4th 1794. In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624. Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminarily Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and therefore the presumption applies.

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement. The release applicable to the Class is appropriately tethered to allegations in the Action. (Agreement at ¶¶ 1.38 and 6.2.)

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

The Parties attended two arms-length mediation sessions, first with Steve Rottman, Esq. on November 21, 2021, and second with Hon. Carl J. West (Ret.) on June 5, 2023, in order to ultimately reach this Settlement. Through discovery, Defendant provided Class Counsel with payroll, timekeeping and employment data and other information regarding the Class Members, various internal documents, and other compensation and employment-related materials. Class Counsel analyzed the data with the assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediators. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable, and adequate.

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

Class Counsel has conducted an investigation into the facts of the class action. Extensive discovery was obtained, which included depositions, discovery disputes, the production of thousands of pages documents and data, and contested law and motion which resulted in a certified Class. Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. In addition, Class Counsel previously negotiated settlements with other employers in actions involving nearly identical issues and analogous defenses. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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 ¶ 3.2(e).) Based upon 72 Class Members who collectively worked 12,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides an average value of $12,847 per Class Member and $77 per Workweek and after deductions, the Net Settlement Amount provides an average recovery of $7,037.04 per Class Member and a recovery of $42.22 per Workweek. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due for the Class at the time of the mediation were calculated by Berger Consulting, Plaintiff's damage expert. As to the certified Class claims which are at issue in this Action, which are meal and rest periods, wage statement penalties, and waiting time penalties, Plaintiff used this expert to analyze the data and determine the potential unpaid wages for the employees. The maximum potential damages were calculated to be $3,060,000 for alleged meal period damages based upon a 50% potential violation rate for shifts, and $288,888 for the maximum value of potential waiting time penalties, and $362,880 for the maximum value of potential waiting time penalties.[4] The total maximum value of the certified Class claim for damages and penalties combined

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[4] While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest periods were owed given Defendant's position that Plaintiff and Class Members were provided with an opportunity for such breaks. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)

was therefore $3,710,880. Defendant vigorously disputed Plaintiff's calculations and exposure theories. See Decl. Nordrehaug, at ¶6 for additional details as to the valuation of the claims.

Consequently, the Gross Settlement Amount of $925,000 represents 25% of the maximum value of the alleged damages and penalties at issue in this case at the time this Settlement was negotiated.[5] Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for waiting time and wage statement penalties, even if wages were owed to the Class. The above maximum calculations should then be adjusted in consideration for both the risk of liability and the risk of establishing class-wide damages on all claims. Given the amount of the settlement as compared to the potential value of claims in this case and the defenses asserted by Defendant, this settlement is fair and reasonable.[6] Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant contends that its meal and rest period policies fully complied with California law and Defendant did not fail to

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("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due.").

[5] Because the PAGA claim is not a class claim and primarily is paid to the State of California, Plaintiff has not included the PAGA claim in this discussion of the value of the class claims. The PAGA claim and the approval thereof is addressed in the Decl. Nordrehaug at ¶33.

[6] See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a settlement where the settlement amount constituted approximately 25% of the estimated overtime damages for the class); *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."); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%" of maximum valuation).

provide the opportunity for legally required meal and rest breaks. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court,* 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability and value as to the meal and rest period claims. Defendant also argues that based on their facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (May 6, 2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law.") Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to maintain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any employees other than themselves. As demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. While other cases have approved class certification and a class-wide recovery at a trial of wage and hour claims, class certification in this action continued to be hotly disputed and the maintenance of a certified class through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25. Additional discussions of these risks of litigation and the defenses asserted by the Defendant are detailed in the Decl. Nordrehaug at ¶ 26.

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

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely 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.'"

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

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

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

Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff performed his duties admirably by working with Class Counsel over the course of four years of litigation, responding to discovery and appearing for deposition. The Declaration of the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the not to exceed amount for the requested service award is within the accepted range of awards for purposes of preliminary approval, subject to the Court's determination at final approval. *See e.g. Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of $15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for $12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.,* 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Louie v. Kaiser Foundation Health Plan, Inc*., 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding $25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before the Action was filed, and during the course of four years of litigation, Class Counsel engaged in extensive discovery to obtain necessary information. Class Counsel conducted a review and analysis of the relevant documents and data. Class Counsel moved for class certification, which this Court granted by Order dated March 19, 2024. Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiff contends that the proposed settlement meets all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated by the contested motion for class certification and this Court's ruling granting class certification in the Order dated March 19, 2024. Therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should confirm the certified Class for purposes of this settlement, defined as follows:

> All individuals who are or previously were employed by Defendant in California as a Premium Sales Consultant or a Senior Sales Consultant at any time during the Class Period, who did not sign a severance agreement and who did not opt out of the Class Action.

(Agreement at ¶ 1.5.)

The Class Period is from November 24, 2016 to March 19, 2024. (Agreement at ¶ 1.13.)

As held by this Court in the March 19, 2024 Order, this Class satisfies the requirements for certification under California Code of Civil Procedure § 382 for purposes of the meal and rest period claim, the wage statement claim under Labor Code § 226, and the derivative waiting time claim under Labor Code § 203 for the above-described claims. The Class is sufficiently numerous and ascertainable, the Plaintiff's claims are typical of the Class, the identified claims of the certified Class present predominate comment questions, and class certification is a superior mechanism to resolve these claims of the certified Class. While Defendant reserves all rights to continue to dispute that the Plaintiff can satisfy these requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the certification of the Class should be confirmed for purposes of this Settlement. (Agreement at ¶ 2.10.)

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 8.4(b).)

The Class Notice to be approved by the Court is based on the Court's model form and includes all relevant information. (*See* Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members, including a description of the applicable release; (iii) information to the Class Members regarding how to object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award request; and (vi) the anticipated expenses of the Administrator. Because this Class was previously certified, and class notice was already sent to the Class, this Settlement does not have an opt out procedure. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have sixty (60) days from the date that the Class Notice is mailed to them (the "Objection Deadline") to challenge their workweeks / pay periods or to submit a written objection. (Agreement at ¶¶ 1.29, 8.5, 8.6.) Class Members shall be given the opportunity to object to the class portion of the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. 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

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

Dated: May 28, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: *__/s/ Kyle Nordrehaug__*
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