

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

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

14 **IN AND FOR THE COUNTY OF MONTEREY**

15 RATI GANDHALE, an individual, on
16 behalf of herself and on behalf of all
17 persons similarly situated,

18 Plaintiffs,

19 v.

20 SELECT REHABILITATION LLC, a
21 Limited Liability Company and DOES 1
22 through 50, Inclusive,

23 Defendants.

Case No.: **20CV002240**

(Consolidated with Case No. 21CV000740)

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

Hearing Date: June 10, 2022

Hearing Time: 8:30 a.m.

Dept: 14

Judge: Hon. Carrie M. Panetta

Action Filed: August 25, 2020

Trial Date: Not Set

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT	2
III.	CASE BACKGROUND	4
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	4
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	5
B.	Factors To Be Considered In Granting Preliminary Approval	6
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel	7
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval	9
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	12
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	13
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	14
A.	California Code of Civil Procedure §382	14
B.	The Proposed Class Is Ascertainable and Numerous	15
C.	Common Issues of Law and Fact Predominate	15
D.	The Claims of the Plaintiff Is Typical of the Class Claims	16
E.	The Class Representation Fairly and Adequately Protects the Class	16
F.	The Superiority Requirement Is Met	17
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	17
VIII.	CONCLUSION	18

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	11
<i>Boggs v. Divested Atomic Corp.</i> , 141 F.R.D. 58 (S.D. Ohio 1991)	17
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	15
<i>Boyd v. Bechtel Corp.</i> , 485 F.Supp. 610 (N.D. Cal. 1979)	6
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885, 256 Cal. Rptr. 3d 547 (2019)	11
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	4
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	5
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	4, 5, 6, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	10, 12, 14
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	12
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	5
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	5
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	15
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	12, 13, 14
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	11, 16, 17
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	12

1	<i>In re Tableware Antitrust Litig.</i> ,	
2	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
3	<i>In re Wash. Public Power Supply System Sec. Litig.</i> ,	
4	720 F. Supp. 1379 (D. Ariz. 1989)	6, 9
5	<i>Kirkorian v. Borelli</i> ,	
6	695 F. Supp. 446 (N.D. Cal. 1988)	6
7	<i>Kullar v. Foot Locker</i> ,	
8	168 Cal. App. 4th 116 (2008)	8
9	<i>Linder v. Thrifty Oil Co.</i> ,	
10	23 Cal. 4th 429 (2003)	16
11	<i>Ling v. P.F. Chang's China Bistor, Inc.</i> ,	
12	245 Cal. App. 4th 1242 (2016)	10
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
14	2008 WL 4473183 (S.D.Cal. 2008)	13
15	<i>Ma v. Covidien Holding, Inc.</i> ,	
16	2014 WL 2472316 (C.D. Cal. 2014)	10
17	<i>Maldonado v. Epsilon Plastics, Inc.</i> ,	
18	22 Cal. App. 5th 1308 (2018)	10
19	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
20	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	12
21	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
22	221 F.R.D. 523 (C.D. Cal. 2004)	6
23	<i>Nordstrom Comm'n Cases</i> ,	
24	186 Cal. App. 4th 576 (2010)	4, 10
25	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	
26	688 F.2d. 615 (9th Cir. 1982)	4, 6
27	<i>Rose v. City of Hayward</i> ,	
28	126 Cal.App.3d 926 (1981)	15
	<i>Sav-On Druq Stores, Inc. v. Superior Court</i> ,	
	34 Cal. 4th 319 (2004)	15, 17
	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	5
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	10
	<i>Tate v. Weyerhaeuser Co.</i> ,	
	723 F.2d 598 (8th Cir. 1983)	16

1	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
2	97 F.3d 1227 (9th Cir. 1996)	17
3	<i>Viceral v. Mistras Grp., Inc.</i> ,	
4	2016 WL 5907869 (N.D. Cal. 2016)	10
5	<i>Vasquez v. Superior Court</i> ,	
6	4 Cal.3d 800 (1971)	5
7	<i>Weinberger v. Kendrick</i> ,	
8	698 F.2d 61 (2d Cir. 1982), <i>cert. denied</i> 464 U.S. 818 (1983)	6
9	<i>Wershba v. Apple Computer, Inc.</i> ,	
10	91 Cal.App.4th 224 (2001)	5, 6
11	<u>Statutes, Rules and Regulations:</u>	
12	California Code of Civil Procedure §382	14, 15
13	California Labor Code §203	10
14	California Labor Code §226	10
15	California Rules of Court, rule 3.766	18
16	California Rules of Court, rule 3.769	5, 18
17	<u>Secondary Sources:</u>	
18	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992)	4, 5, 15
19	<i>Manual For Complex Litigation</i> , (Second), §30.44, 41.43 (1993)	5
20	3B J. Moore, <i>Moore's Federal Practice</i> §§23.80 - 23.85 (2003)	6
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Rati Gandhale (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Select Rehabilitation, LLC (“Defendant”), and seeks entry of an order: (1) preliminarily approving the
5 proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally
6 certifying the Class, which is comprised of “all individuals who are or previously were employed by
7 Defendant in California in one or more of the Covered Positions during Class Period [August 25, 2016
8 through December 28, 2021]”; (3) provisionally appointing Plaintiff as the representative of the Class;
9 (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik of
10 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the
11 form and method for providing class-wide notice; (6) directing that notice of the proposed settlement
12 be given to the class; (7) appointing Simpluris as Settlement Administrator; and, (8) scheduling a final
13 approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry of the
14 Judgment, and Plaintiff’s motion for approval of attorneys’ fees and expenses.

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

19 As consideration for this Settlement, the Gross Settlement Amount is One Million Eight
20 Hundred Fifty Thousand Dollars (\$1,850,000) to be paid by Defendant, as set forth in the Agreement.
21 The Gross Settlement Amount is all-inclusive of all payments contemplated in this resolution,
22 excluding any employer-side payroll taxes on the portion of the settlement payments allocated to wages
23 which shall be separately paid by Defendant to the Settlement Administrator. The Settlement is all-in
24 with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

25 On September 14, 2021, the Parties participated in an all-day mediation presided over by David
26 A. Rotman, a respected mediator of wage and hour representative and class actions. During the
27

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

1 mediation, each side, represented by its respective counsel, were able to agree to settle the Action based
2 upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding.
3 Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily
4 approved because there is a substantial monetary payment, and there are substantial litigation and
5 class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary
6 approval of the Agreement and enter the proposed order submitted herewith.

7 **II. DESCRIPTION OF THE SETTLEMENT**

8 The Gross Settlement Amount is One Million Eight Hundred Fifty Thousand Dollars
9 (\$1,850,000.00) (Agreement at ¶II(39).) Under the Settlement, the Gross Settlement Amount includes
10 all Settlement Shares to Participating Class Members, all Settlement Administration Expenses, Class
11 Counsel Fees Payment and Class Counsel Litigation Expenses Payment, PAGA Payment, and the Class
12 Representative Service Payments. (Agreement at ¶ III(39)-(40).) The Gross Settlement Amount does
13 not include Defendant's share of payroll taxes. (Agreement at ¶ III(39).) The Gross Settlement
14 Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ III(39).) Decl. Nordrehaug
15 at ¶15.

16 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
17 Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶
18 III(44)(i).) Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement
19 Administrator will pay the Settlement Shares to Participating Class Members, Class Counsel's
20 attorneys' fees and costs, the PAGA Payment, the Class Representative Service Payment, and employer
21 and employee tax withholdings applicable to the Net Settlement Amount allocated to wages.
22 (Agreement at ¶ III(44)(i).) Decl. Nordrehaug at ¶16.

23 The Net Settlement Amount shall equal the Gross Settlement Amount less the Court-approved
24 Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation
25 Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses. (Agreement at
26 ¶ I(21).) The Net Settlement Amount will be distributed as the Settlement Shares to each Participating
27 Class Member defined at ¶I(24) as a Class Member who does not timely exclude himself or herself
28 from the Settlement and will therefore receive his or her share of the Net Settlement Amount

1 automatically without the need to return a claim form. (Agreement at ¶ III(42).) The Settlement Shares
2 for Class Members will be calculated as follows: the Settlement Administrator shall divide the Net
3 Settlement Amount by the total number of weeks included in the dates of employment to determine a
4 dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the
5 number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to
6 calculate their Settlement Share. (Agreement at ¶ III(42(b).) Workweeks will be based on Defendant's
7 records, however Class Members will have the right to challenge their workweeks. Decl. Nordrehaug
8 at ¶17.

9 Class Members may choose to opt-out of the Settlement by following the directions in the Class
10 Notice. (Agreement at ¶ III(44)(c), Ex. A.) All Class Members who do not "opt out" will be deemed
11 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
12 Settlement Share. Finally, the Class Notice will also advise the Class Members of their right to object
13 to the Settlement and/or dispute their workweeks. (Agreement at ¶ III(44)(c), Ex. A.) Decl.
14 Nordrehaug at ¶18.

15 A Participating Class Member must cash his or her Settlement Share check within 180 days
16 after it is mailed. (Agreement at ¶III(44)(j).) The Settlement Administrator will send a reminder to
17 Participating Class Members who have not cashed their checks within 120 days after its last mailing
18 to the affected individual. (Agreement at ¶ III(44)(j)).) Any settlement checks not cashed within 180
19 days will be voided and any the funds from such uncashed checks will be paid to the California State
20 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not
21 cash their check. (Agreement at ¶ III(44)(j).) Decl. Nordrehaug at ¶19.

22 The Parties have agreed to use Simpluris as the Settlement Administrator. (Agreement at ¶
23 III(43).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the
24 expenses of administering the Settlement in an amount not to exceed \$15,000. (Agreement at ¶
25 III(40)(d).) Decl. Nordrehaug at ¶20.

26 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
27 to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.
28 (Agreement at ¶ III(40)(b).) Class Counsel will also be allowed to apply separately for an award of

1 Class Counsel Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶
2 III(44)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
3 to the Plaintiff as the Class Representative Service Payment. (Agreement at ¶ III(44)(a).) Decl.
4 Nordrehaug at ¶21.

5 The Parties will seek approval from the Court for the PAGA Payment of \$40,000 out of the
6 Gross Settlement Amount, which shall be allocated 75% (\$30,000) to the LWDA as the LWDA's share
7 of the PAGA Payment pursuant to PAGA and 25% (\$10,000) will be distributed to the Aggrieved
8 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
9 III(40)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
10 to the release of the PAGA claims, whether or not they opt out of the Settlement. (Agreement at ¶
11 III(40)(c).) As set forth in the accompanying proof of service, the LWDA has been served with this
12 motion and the Agreement. Decl. Nordrehaug at ¶22.

13 **III. CASE BACKGROUND**

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

20 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 21 **GRANT PRELIMINARY APPROVAL**

22 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
23 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
24 California "[p]ublic policy generally favors the compromise of complex class action litigation."
25 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
26 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
27 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
28 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.

1 denied, 459 U.S. 1217 (1983)).

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

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

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

23 The approval of a proposed settlement of a class action suit is a matter within the broad
24 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk* , 48 Cal.App.4th 1794.

25
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 Preliminary approval does not require the trial court to answer the ultimate question of whether a
2 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
3 of the settlement has been given to the class members and after they have been given an opportunity
4 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
5 *Federal Practice* §§23.80 - 23.85 (2003).

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

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

26 **B. Factors To Be Considered In Granting Preliminarily Approval**

27 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
28 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)

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

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

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

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

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

13 This settlement is the result of extensive and hard-fought litigation as well as negotiations
14 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
15 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
16 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the class claims
17 in accordance with this Settlement.³

18 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
19 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in

21 ³ The release applicable to the Class is tethered to allegations in the Action as follows: "Upon the
22 Effective Date, Released Parties shall receive a release from the Participating Class Members of all
23 class claims pled or which could have been pled based on the factual allegations contained in the
24 operative complaint which occurred during the Class Period including claims for: (a) failure to pay all
25 minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal periods, or
26 premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or
27 premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements;
28 (f) failure to timely pay all wages due upon separation of employment; (g) failure to reimburse business
expenses; (h) all claims for unfair business practices that could have been premised on the facts, claims,
causes of action or legal theories described above ("Released Class Claims"). Claims for vested
benefits, wrongful termination, unemployment insurance, disability, social security, workers'
compensation, and class claims outside of the Class Period are expressly excluded from being
released." (Agreement at ¶ III(44)(a).)

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

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

15 As consideration for this Settlement, the Gross Settlement Amount is One Million Eight
16 Hundred Fifty Thousand Dollars (\$1,850,000.00). The Settlement is all-in with no reversion to
17 Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

28 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying

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

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

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

14 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
15 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
16 receive payment according to the same formula. (Agreement at ¶ III(42).) The Gross Settlement
17 Amount provides an average value of \$1,086 per Class Member and \$22 per workweek, and after
18 deductions, the Net Settlement Amount provides an average recovery of \$671 per Class Member and
19 \$13.91 per work week. Decl. Nordrehaug, ¶6.

20 The calculations to compensate for the amount due to the Class Members at the time this
21 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
22 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
23 putative class members and determined the potential maximum damages for the class claims. For the
24 Class, Plaintiff determined that the maximum potential unpaid overtime due to the alleged
25 miscalculation of the regular rate was \$47,215, the potential off-the-clock damages were \$2,850,384
26 for an alleged 30 min each week, the maximum potential meal period damages were estimated to be
27 \$7.2 million, after deducting premiums actually paid by Defendant, the maximum rest period damages
28 were estimated to be \$7.66 million, and the maximum damages for unreimbursed expenses were

1 estimated to be \$187,950 based upon \$5 per month for cell phone usage. In total, the damages for the
2 Class were calculated to have a maximum total value of \$17,945,549. In addition, Plaintiff calculated
3 that the maximum value of the waiting time penalties were between \$395,247 and \$3,582,996
4 depending on the predicate violation giving rise to the penalties, and the maximum value of the wage
5 statement penalties were \$4,925,300, however, these wage statement and waiting time penalties claims
6 potentially have a much smaller value, even if damages were awarded, to the extent that they are only
7 derivative of the meal and rest break claims.⁴ Decl. Nordrehaug, ¶6.

8 Consequently, the Gross Settlement Amount represents more than 10% of the value of the
9 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
10 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
11 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
12 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
13 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

14
15 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
16 226, Plaintiff recognized that these derivative claims were subject to additional defenses asserted by
17 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages
18 for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs were
19 properly compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
20 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
21 and when the wages were due."). Additionally, Courts have held that violations of the meal and rest
22 period regulations, which require payment of a "premium wage" for each improper meal period, do **not**
23 give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal.
24 App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336
25 (2018). As a result, the viability of Plaintiff's claims on these theories is uncertain.

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

28 ⁶ 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."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
4 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
5 work time was recorded and paid, and that there was no miscalculation of the regular rate. Defendant
6 contended that its meal and rest period policies fully complied with California law, that Defendant's
7 timekeeping system recorded meal periods, and that all meal periods were provided. Defendant paid
8 some meal premiums and could therefore argue that any missed meals were compensated. Further,
9 Defendant argued that Defendant was not required to record rest periods and that there was no evidence
10 that rest periods were not provided given the facially lawful policies. Finally, Defendant could argue
11 that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakens
12 Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period claims.
13 Defendant also argues that based on its facially lawful practices, it acted in good faith and without
14 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
15 wage statements. In fact, under the current state of the law, it is questionable whether these penalties
16 could be awarded at all based upon the alleged meal and rest period violations. If successful,
17 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff
18 believes that these defenses could be overcome, Defendant maintains these defenses have merit and
19 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

20 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
21 to obtain class certification and thereby not recover on behalf of any employees other than herself.
22 Defendant argued that the individual experience of each putative class member varied with respect to
23 the claims. Defendant could also contest class certification by arguing injury and good faith were case
24 by case determinations that precluded class certification. Plaintiff is aware of cases where class
25 certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
26 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
27 contended that individual differences in work experiences not only impacted damages but would also
28 impact certification. Finally, even if class certification was successful, as demonstrated by the

1 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
2 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
3 While other cases have approved class certification in wage and hour claims, class certification in this
4 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
5 ¶ 25.

6 After arm's length negotiations between experienced and informed counsel, the Parties
7 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
8 \$1,850,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

15 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
16 (9th Cir. 2000).)

17 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 18 **Class Representatives or Segments Of The Class**

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

24 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration
25 for the service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(40)(1).)
26 Plaintiffs performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
27 At this stage, the requested service award of \$10,000 is well within the accepted range of awards for
28 purposes of preliminary approval. See e.g. *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); *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.*,

1 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in
2 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding
3 \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As
4 explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
5 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
6 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
7 all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

5 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
6 213 F.3d at 459).

7 Here, Class Counsel was in an equal position to evaluate the fairness of this Settlement because
8 Class Counsel performed a thorough investigation, received all necessary information which was
9 evaluated with the assistance of an expert, and also performed independent investigations and due
10 diligence to confirm the accuracy of the information supplied by Defendant.

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

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

16 All individuals who are or previously were employed by Defendant in California in one
17 or more of the Covered Positions during Class Period.

18 (Agreement at ¶ I(3).)

19 The "Covered Positions" are the following job positions: Cluster Program Manager (OT); Certified
20 Occupational Therapy Assistant; Occupational Therapist; Program Assistant; Program Director—OT;
21 Program Director—PT; Program Manager; Program Manager Backup—COTA; Program Manager
22 Backup—OT; Program Manager Backup—PT; Program Manager Backup—PTA; Program Manager
23 Backup—Rehab Tech; Program Manager Backup—RT; Program Manager Backup—SLP; Program
24 Manager—COTA; Program Manager—OT; Program Manager—PT; Program Manager—PTA;
25 Program Manager—SLP; Physical Therapist; Physical Therapist Assistant; Rehab Technician; Speech
26 Language Pathology; Wellness Coordinator. (Agreement at ¶ I(2).) The "Class Period" is from August
27 25, 2016 through December 28, 2021. (Agreement at ¶ I(10).)

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

Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
Procedure § 382. The California Supreme Court has summarized the standard for determining whether

1 class certification is appropriate as follows:

2 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
3 of a common or general interest, of many persons, or when the parties are numerous,
4 and it is impracticable to bring them all before the court...” The party seeking
5 certification has the burden to establish the existence of both an ascertainable class and
6 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.

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

8 While Defendant reserve all rights to dispute that the Plaintiff can satisfy these requirements,
9 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
10 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
11 settlement only. (Agreement at ¶ II(34).)

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

13 Plaintiff brings this action on behalf of a Class of individuals during the applicable Class Period.
14 Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be
15 determined through examination of Defendant’s files. Given that the Class consists of approximately
16 1,702 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
17 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
18 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, the 1,702
19 current and former employees that comprise the Class can be identified based on Defendant’s records
20 and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

27 Commonality exists if there is a predominant common legal question regarding how an
28 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,

1 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
2 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
3 certification stage since the question is “essentially a procedural one that does not ask whether an action
4 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

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

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

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

19 In the instant case, Plaintiff contends that there can be little doubt that the typicality requirement
20 is satisfied. The Plaintiff, like every other member of the Class, worked for Defendant in a Covered
21 Position during the Class Period. Plaintiff contends that, like every other member of the Class, they
22 were subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
23 Plaintiff assert that the claims of the Plaintiff and the Class Members arise from the same course of
24 conduct by the Defendant, involve the same employment policies and practices of Defendant, and are
25 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts
26 that the typicality requirement is met as to the common issues presented in this case. Defendant does
27 not oppose a finding of typicality for purposes of this Settlement only.

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

1 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
2 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
3 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
4 met here. First, Plaintiff are well aware of her duties as the representative and has actively participated
5 in the prosecution of this case to date. She effectively communicated with counsel, provided
6 documents to counsel and participated in the investigation and negotiations in the Action. Second,
7 Plaintiff retained competent counsel who are experienced in employment class actions and who have
8 no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
9 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
10 the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied
11 but will not oppose such a finding for purposes of this Settlement only.

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

13 To certify a class, the Court must also determine that a class action is superior to other available
14 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
15 common issues will reduce litigation costs and promote greater efficiency, a class action may be
16 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
17 1996). As courts have previously observed:

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

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

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

28 **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

1 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
2 with the Agreement, Defendant will provide to the Settlement Administrator an electronic database
3 containing each Class Member's Class Data. (Agreement at ¶ III(44)(b)(i).) Within fourteen (14) days
4 after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all
5 Class Members via first-class U.S. Mail using the most current mailing address information available.
6 (Agreement at ¶ III(44)(b)(ii).) The Class Notice, drafted jointly and agreed upon by the Parties
7 through their respective counsel and to be approved by the Court, includes all relevant information. (See
8 Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i)
9 information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt
10 out; (iii) information to the Class Members regarding how to opt out and how to object to the
11 Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of
12 attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award request; and
13 (vi) the anticipated expenses of the Settlement Administrator. The Parties agree that the Class Notice
14 Packet will also include a Spanish translation of the Class Notice. Decl. Nordrehaug at ¶32.

15 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
16 the Class Notice is mailed to them to request exclusion (opt-out) or to submit a written objection.
17 (Agreement at ¶ III(44)(c).) In the event of a re-mailing, the response deadline will be extended by an
18 additional 15 days. (Agreement at ¶ III(44)(c).) Class Members shall be given the opportunity to object
19 to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval
20 Hearing. (Agreement at ¶ III(44)(c)(i).) Class Members who do not submit a timely and proper request
21 to opt-out will automatically receive a payment of their Settlement Share. This notice program was
22 designed to meaningfully reach the Class Members and it advises them of all pertinent information
23 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
24 satisfies the requirements of due process and is the best notice practicable under the circumstances and
25 complies with Rules of Court 3.766 and 3.769(f).

26 **VIII. CONCLUSION**

27 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
28 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final

1 fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary
2 Approval.

3 Dated: May 10, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

4
5 By: /s/ Kyle Nordrehaug
6 Kyle R. Nordrehaug, Esq.
7 Attorney for Plaintiffs
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28