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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

XAVIER DREMEE, CHRISTINA
BONNIWELL, and ALEXIS MONROE,
individually, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiff,

vs.

AURORA-SAN DIEGO, LLC, a California
Limited Liability Company; SIGNATURE
HEALTHCARE SERVICES, LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2021-00007280-CU-OE-CTL

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

Hearing Date: September 21, 2023

Hearing Time: 9:30 a.m.

Judge: Hon. Gregory W. Pollack
Dept: 71

Action Filed: February 19, 2021

Trial Date: Vacated

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1 **I. INTRODUCTION**

2 Plaintiffs Christina Bonniwell, Alexis Monroe, and Xavier Dremee (“Plaintiffs”) respectfully
3 submit this memorandum in support of the unopposed motion for preliminary approval of the proposed
4 class action settlement with Defendant Aurora San Diego, LLC (“Defendant”), and seeks entry of an
5 order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 are or previously were employed by Defendant in California who were classified as non-exempt
8 employees during the Class Period” of July 30, 2019 to August 16, 2022; (3) provisionally appointing
9 Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle
10 R. Nordrehaug and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class
11 Counsel for the Class; (5) approving the form and method for providing class-wide notice; (6) directing
12 that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group as the
13 Administrator; and (8) scheduling a final approval hearing date proposed for February 16, 2024 to
14 consider Plaintiffs’ motion for final approval of the settlement and entry of the Judgment, and
15 Plaintiffs’ motion for approval of attorneys’ fees and expenses. Plaintiffs and Defendant (collectively
16 the “Parties”) have reached a full and final settlement of the above-captioned action, which is set forth
17 in the Class Action and PAGA Settlement Agreement and Stipulation to Modify Agreement
18 (collectively the “Agreement”) filed concurrently with the Court.¹ A copy of the fully executed
19 Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”),
20 served and filed herewith, and the form of the Agreement is the Los Angeles Superior Court model
21 form for class and PAGA settlements.

22 As consideration for this Settlement, the Gross Settlement Amount is Five Hundred Thousand
23 Dollars (\$500,000.00) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement
24 Amount will settle all issues pending in the Action between the Parties and will be made in full and
25 final settlement of the Released Class Claims. The Gross Settlement Amount includes all payments
26 of Individual Class Payments to the Participating Class Members, Administration Expenses Payment,
27

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

1 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative
2 Service Payments, and the PAGA Penalties. The Gross Settlement Amount does not include the
3 employer's share of payroll taxes which will be separately paid by Defendant. The Settlement is all-in
4 with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

5 The following is a table of the key financial terms of the Settlement and the proposed
6 deductions:

7 **\$500,000** (Gross Settlement Amount)
8 - \$30,000 (Plaintiffs' proposed service award not to exceed \$10,000 each)
9 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10 - \$166,666 (Class Counsel Fees Payment - not to exceed amount)
11 - \$100,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
12 - \$17,000 (Administration Expenses Payment - not to exceed amount)
13 **\$166,334** (Net Settlement Amount)

14 Based upon the 638 Class Members who collectively worked 20,000 pay periods at the time of
15 mediation, the Gross Settlement Amount provides a value of \$783 per Class Member and \$25 per pay
16 period and the Net Settlement Amount provides an average recovery of \$260.71 per Class Member and
17 a recovery of \$8.31 per pay period (not including the PAGA Penalties). Decl. Nordrehaug at ¶6.

18 On June 16, 2022, the Parties participated in an all-day mediation presided over by Mark Rudy,
19 a respected and experienced mediator of wage and hour representative and class actions. Following
20 this mediation, the Parties reached an agreement to settle the Action based upon a mediator's proposal
21 which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5.
22 This Settlement is fair, reasonable and adequate, and should be preliminarily approved because there
23 is a substantial monetary payment, and there are substantial litigation and class-certification risks.
24 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
25 and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Five Hundred Thousand Dollars (\$500,000) . (Agreement
28 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 Plaintiffs; and (5) the PAGA Penalties payment.

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

4 Within thirty (30) days of the Effective Date, Defendant shall deposit the Gross Settlement
5 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
6 to Participating Class Members along with the other Court-approved distributions shall be made by the
7 Administrator within fourteen (14) days after Defendant fully funds the Gross Settlement Amount.
8 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

20 Class Members may choose to opt-out of the Settlement by following the directions in the Class
21 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
22 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
23 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
24 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
25 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
26 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
27 to object to the Settlement and/or dispute their Pay Periods. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
28 Decl. Nordrehaug at ¶18.

1 A Participating Class Member must cash his or her Individual Class Payment check within 180
2 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
3 be voided and any funds represented by such checks to to the California Controller's Unclaimed
4 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
5 requirements of California Code of Civil Procedure Section 384, subd. (Agreement at ¶ 5.4.) Decl.
6 Nordrehaug at ¶19.

7 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
8 in this action (“Administrator”). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
9 administration in an amount not to exceed \$17,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

10 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
11 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
12 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
13 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(b).) Subject
14 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs
15 as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

16 Subject to Court approval, One Hundred Thousand Dollars (\$100,000) will be paid from the
17 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
18 Labor Code Section 2698, *et seq.* (“PAGA”). Pursuant to the express requirements of Labor Code §
19 2699(i), the PAGA Penalties shall be allocated as follows: 75% (\$75,000) shall be allocated to the
20 Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$25,000)
21 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
22 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
23 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
24 Nordrehaug at ¶22.

25 **III. CASE BACKGROUND**

26 The description of the case and claims, along with the procedural history, is set forth in the
27 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
28 exchange of documents and information in connection with the Action which permitted Class Counsel

1 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
2 in mediation on June 16, 2022 with Mark Rudy, which after arm's length negotiations, resulted in this
3 Settlement. Decl. Nordrehaug, ¶12.

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

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

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

20 The primary question presented on an application for preliminary approval of a proposed class
21 action settlement is whether the proposed settlement is "within the range of possible approval."
22 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
23 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
24 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."

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

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

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

18 In considering a potential settlement for preliminary approval purposes, the trial court does not
19 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
20 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
21 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is
22 compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688
23 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
24 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "the
25 terms of the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61,
26 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
27 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
28 settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might

1 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

2 With regard to class action settlements, the opinions of counsel should be given considerable
3 weight both because of counsel’s familiarity with this litigation and previous experience with cases
4 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
5 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
6 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
7 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
8 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
9 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

18 If the proposed settlement appears to be the product of serious, informed, noncollusive
19 negotiations, has no obvious deficiencies, does not improperly grant preferential
20 treatment to class representatives or segments of the class, and falls within the range of
21 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.

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

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

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

25 This settlement is the result of extensive and hard-fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
27 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
28 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released

1 Class Claims of the Class in accordance with this Settlement.³

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

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
20 Five Hundred Thousand Dollars (\$500,000). The Settlement is all-in with no reversion to Defendant
21 and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

22
23 ³ The release applicable to the Class is appropriately tethered to allegations in the Action as the
24 "Released Class Claims" are "all all class claims pled or could have been pled based on the factual
25 allegations contained in the Operative Complaint and PAGA Notices which occurred during the Class
26 Period, including Labor Code §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a),
27 1194, 1197, 1197.1, 1198, 2802, 2699 et seq., Business & Professions Code §§ 17200, et seq., IWC
28 Wage Orders, Sections 5, 7, 14, and all other applicable sections of IWC Wage Orders. Except as
expressly set forth in this Agreement, Participating Class Members do not release any other claims,
including claims for vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers' compensation, or class
claims based on facts occurring outside the Class Period." (Agreement at ¶¶ 1.39 and 6.2.)

1 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
2 the course of more than two years, Class Counsel diligently evaluated the Class Members' claims
3 against Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel
4 with access to necessary information for the Class. In addition, Class Counsel previously negotiated
5 settlements with other employers in actions involving nearly identical issues and analogous defenses.
6 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
7 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
8 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
9 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
10 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

23 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within** 24 **the Range for Approval**

25 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
26 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
27 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon the 638 Class
28 Members who collectively worked 20,000 pay periods at the time of mediation, the Gross Settlement

1 Amount provides a value of \$783 per Class Member and \$25 per pay period and the Net Settlement
2 Amount provides an average recovery of \$260.71 per Class Member and a recovery of \$8.31 per pay
3 period (not including the PAGA Penalties). Decl. Nordrehaug, ¶6.

4 The calculations to compensate for the amount due to the Class Members at the time this
5 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
6 mediation. Class Counsel analyzed the data for putative class members and determined the potential
7 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
8 wages due to off the clock work was potentially \$729,396, the maximum potential damages for unpaid
9 meal premiums were estimated to be \$1,695,249 based upon an alleged 55% violation rate and after
10 deducting the meal period premiums paid by Defendant, the maximum potential rest period damages
11 were estimated to be \$1,800,305 based upon the same alleged 55% violation rate, and the maximum
12 potential damages for failure to provide expense reimbursement were calculated to be \$87,400. In total,
13 the damages for the Class were calculated to have a maximum potential total value of \$4,312,350. In
14 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
15 \$2,404,642, and the maximum value of the potential wage statement penalties were \$1,700,900.⁴ Decl.
16 Nordrehaug, ¶6.

17 Consequently, the Gross Settlement Amount represents more than 11.5% of the potential
18 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
19 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
20 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
21 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
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23 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
24 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
25 asserted by Defendants, including, a good faith dispute defense as to whether any wages were owed
26 given Defendant's position that Plaintiffs were properly compensated. *See Nordstrom Commission*
Cases, 186 Cal. App. 4th 576, 584 (2010) ("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.").

27 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not included the
28 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

1 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
5 Defendant asserted that Defendant's practices complied with all applicable laws. Defendant argued
6 that all work time was paid for. Defendants contended that their meal and rest period policies fully
7 complied with California law, that Defendant's timekeeping system recorded meal periods, and that
8 all meal periods were provided. Defendant's could argue its payment of significant meal period
9 premiums was evidence of legally compliance practices. Further, Defendant argued that Defendant was
10 not required to record rest periods. As to expenses reimbursement, Defendant maintained that
11 employees were not required to use their cell phones and any use of their cell phone was voluntary for
12 their convenience and therefore not subject to Labor Code §2802. Defendant argued that the decisions
13 in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal.
14 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal. App.5th 85 (2021), weakened
15 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
16 Defendant also argues that based on its facially lawful practices, they acted in good faith and without
17 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
18 wage statements. If successful, Defendant's defenses could eliminate or substantially reduce any
19 recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
20 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
21 Nordrehaug, ¶ 24.

22 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
23

24 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 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 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
2 Defendant argued that the individual experience of each putative class member varied with respect to
3 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
4 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
5 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
6 (2019) (denying certification of rest break claims). Defendant also maintained that arbitration
7 agreements with class waivers signed by the Class Members would prevent certification of a class.
8 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
9 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
10 overcome for a class wide recovery even where the class has been certified. While other cases have
11 approved class certification in wage and hour claims, class certification in this action would have been
12 hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

13 After arm's length negotiations between experienced and informed counsel, the Parties
14 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
15 \$500,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

22 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
23 (9th Cir. 2000)).

24 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 25 **Class Representatives or Segments of The Class**

26 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
27 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
28 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 pay periods worked by that individual. Decl. Nordrehaug, ¶4.

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration

1 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiffs
2 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. In support,
3 Plaintiffs will present declarations to address their work and service on behalf of the Class. For
4 purposes of this preliminary approval stage, the requested service award of \$10,000 is well within the
5 accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.),*
6 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
7 payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D.
8 Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
9 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
10 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
11 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
12 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
13 representatives to compensate the employees for the time and effort expended on the case, for the risk
14 of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive
15 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

16 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 17 **Preliminary Approval Of The Settlement**

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

27 Based on the foregoing data and their own independent investigation and evaluation, Class
28 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set

1 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
2 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
3 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
4 parties possessed sufficient information to make an informed judgment regarding the likelihood of
5 success on the merits and the results that could be obtained through further litigation. Decl.
6 Nordrehaug at ¶29.

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

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

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

15 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
16 Class Counsel obtained both formal and informal discovery and received all necessary information
17 which was evaluated with the assistance of an expert, and also performed independent investigations
18 and due diligence to confirm the accuracy of the information supplied by Defendant.

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

20 Plaintiffs contends that the proposed settlement meets all of the requirements for class
21 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
22 Court may appropriately approve the Class as defined in the Agreement. This Court should
23 conditionally certify the Class for settlement purposes only, defined as follows:

24 All individuals who are or previously were employed by Defendant in California who
25 were classified as non-exempt employees during the Class Period.

26 (Agreement at ¶ 1.5.)

27 The "Class Period" is from July 30, 2019 to August 16, 2022. (Agreement at ¶ 1.13.)

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

Plaintiffs seek 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 reserves all rights to dispute that the Plaintiffs 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 this settlement only. (Agreement at ¶ 2.13.)

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

13 Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for
14 Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are
15 ascertainable because the class members can readily be determined through examination of Defendant’s
16 files. Given that the Class consists of approximately 638 members, Plaintiffs maintain that numerosity
17 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
18 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
19 satisfies numerosity requirement.) Here, Plaintiffs assert that the 638 individuals who comprise the
20 Class can be identified based on Defendant’s records and are sufficiently numerous for class
21 certification. Decl. Nordrehaug at ¶30.

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

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

28 Commonality exists if there is a predominant common legal question regarding how an

1 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
2 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
3 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
4 certification stage since the question is “essentially a procedural one that does not ask whether an action
5 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

6 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
7 common questions of whether Defendant failed to pay wages for all time worked, whether the
8 Defendant failed to provide meal and rest periods, whether Defendants failed to provide required
9 expense reimbursement, and whether Class Members are entitled to damages and penalties as a result
10 of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate
11 but will not oppose such a finding for purposes of this Settlement only.

12 **D. The Claims of the Plaintiffs 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 this Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
20 satisfied. The Plaintiffs worked for Defendant as non-exempt employees during the Class Period.
21 Plaintiffs contends that, like every other member of the Class, they were subject to the same practices
22 and policies of Defendant and are subject to the same defenses. Thus, Plaintiffs assert that the claims
23 of the Plaintiffs and the Class Members arise from the same course of conduct by the Defendant,
24 involve the same official policies and practices of Defendant, and are based on the same legal theories.
25 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement
26 is met as to the common issues presented in this case. Defendant disputes typicality but Defendant does
27 not oppose a finding of typicality for purposes of this Settlement only.

1 **E. The Class Representative Fairly and Adequately Protected the Class**

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

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

14 To certify a class, the Court must also determine that a class action is superior to other available
15 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
16 common issues will reduce litigation costs and promote greater efficiency, a class action may be
17 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
18 1996). As courts have previously observed:

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

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

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

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

30 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*

1 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
2 upon procedures by which the Class Members will be provided with written notice of the Settlement
3 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
4 Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
5 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
6 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
7 current mailing address information available. (Agreement at ¶ 8.4(b).)

8 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
9 and to be approved by the Court, includes all relevant information. (See Exhibit "A" to the Agreement.)
10 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
11 impact on the rights of the Class Members if they do not opt out, including a description of the
12 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
13 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
14 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service award
15 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

16 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
17 that the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit
18 an objection. (Agreement at ¶¶ 1.43, 8.5, 8.7.) 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 ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
21 out will automatically receive a payment of their Individual Class Payment. 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 **VII. CONCLUSION**

27 Plaintiffs respectfully request 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 February 16, 2024, or as soon thereafter as is available for the Court.

2
3 Dated: August 28, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

4 By: /s/ Kyle Nordrehaug
5 Kyle R. Nordrehaug, Esq.
6 Attorney for Plaintiffs
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