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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LASSEN**

JACQUELINE MARSHALL, LANCE
PHILLIPS, KRISTIN KNOWLES, CHRIS
ANDERSON, KAYVAN MARSHALL,
KANE EDWARDS, JORDAN MOSER,
KYLE EVANS, JENNA DIAZ, TERRI
MAURICIO, JOANN LEE, TEISLEYE
SMITH, LAUREN YOUNG, HEATHER
IMHOF, STEPHANIE SWISHER, JOHN
SICKMAN and MARK HARMON,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

PHI AIR MEDICAL, LLC, a Limited
Liability Company; PHI HEALTH, LLC, a
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

Case No.: **63485**

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

Hearing Date: July 26, 2022
Hearing Time: 9:00 a.m.

Dept: 2
Judge: Hon. Mark R. Nareau

Action Filed: March 17, 2021
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	6
B.	Factors To Be Considered In Granting Preliminary Approval	7
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 Plaintiffs Are Typical of the Class Claims	16
E.	The Class Representation Fairly and Adequately Protects the Class	17
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)	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	5
<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)	5, 6, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	11, 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)	16
<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)	13

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)	11
17	<i>Maldonado v. Epsilon Plastics, Inc.</i> ,	
18	22 Cal. App. 5th 1308 (2018)	11
19	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
20	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	13
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)	5, 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)	11
	<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)	11
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	15
13	California Labor Code §203	11
14	California Labor Code §226	11
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
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1 **I. INTRODUCTION**

2 Plaintiffs Jacqueline Marshall, Lance Phillips, Kristin Knowles, Christopher Anderson, Kayvan
3 Marshall, Kane Edwards, Jordan Moser, Kyle Evans, Jenna Diaz, Terrienne Mauricio, Joann Lee,
4 Teisleye Smith, Lauren Young, Heather Imhof, Stephanie Swisher, John Sickman, and Mark Harmon
5 (“Plaintiffs”) respectfully submit this memorandum in support of the unopposed motion for preliminary
6 approval of the proposed class action settlement with Defendant PHI Health, LLC (“Defendant”), and
7 seek entry of an order: (1) preliminarily approving the proposed settlement of this class action with
8 Defendant; (2) for settlement purposes only, conditionally certifying the Class, which is comprised of
9 “all individuals who are or previously were employed by Defendant in California who were classified
10 as non-exempt employees at any time during the Class Period” of August 2, 2019 through October 27,
11 2021;” (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally
12 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik of Blumenthal Nordrehaug
13 Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and method for
14 providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class;
15 (7) appointing Simpluris as Settlement Administrator, and (8) scheduling a final approval hearing date
16 to consider Plaintiffs’ motion for final approval of the settlement and entry of the Judgment, and
17 Plaintiffs’ motion for approval of attorneys' fees and expenses.

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

22 As consideration for this Settlement, the Gross Settlement Amount is Three Hundred Thirty
23 Thousand Dollars (\$330,000) to be paid by Defendant, as set forth in the Agreement. The Gross
24 Settlement Amount is all-inclusive of all payments contemplated in this resolution, excluding any
25 employer-side payroll taxes on the portion of the settlement payments allocated to wages which shall
26 be separately paid by Defendant to the Settlement Administrator. The Settlement is all-in with no
27

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

1 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

2 On July 27, 2021, the Parties participated in an all-day mediation presided over by Mark Rudy,
3 a respected mediator of wage and hour representative and class actions. Following the mediation, each
4 side, represented by its respective counsel, were able to agree to settle the Action based upon a
5 mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Decl.
6 Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily
7 approved because there is a substantial monetary payment, and there are substantial litigation and
8 class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary
9 approval of the Agreement and enter the proposed order submitted herewith.

10 **II. DESCRIPTION OF THE SETTLEMENT**

11 The Gross Settlement Amount is Three Hundred Thirty Thousand Dollars (\$330,000.00)
12 (Agreement at ¶III(38).) Under the Settlement, the Gross Settlement Amount includes all Settlement
13 Shares to Participating Class Members, all Settlement Administration Expenses, Class Counsel Fees
14 Payment and Class Counsel Litigation Expenses Payment, PAGA Payment, and the Class
15 Representative Service Payments. (Agreement at ¶ III(38)-(41).) The Gross Settlement Amount does
16 not include Defendant's share of payroll taxes. (Agreement at ¶ III(38).) The Gross Settlement
17 Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ III(38).) Decl. Nordrehaug
18 at ¶15.

19 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
20 Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. (Agreement at ¶
21 III(42)(e).) Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement
22 Administrator will pay the Settlement Shares to Participating Class Members, Class Counsel's
23 attorneys' fees and costs, the PAGA Payment, the Class Representative Service Payment, and
24 employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages.
25 (Agreement at ¶ III(42)(e).) Decl. Nordrehaug at ¶16.

26 The Net Settlement Amount shall equal the Gross Settlement Amount less Court-approved the
27 Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation
28 Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses. (Agreement at

¶ I(22).) The Net Settlement Amount will be distributed as the Settlement Shares to each Participating Class Member defined at ¶I(26) as a Class Member who does not timely exclude himself or herself from the Settlement and will therefore receive his or her share of the Net Settlement Amount automatically without the need to return a claim form. (Agreement at ¶ III(40).) The Settlement Shares for Class Members will be calculated as follows: the Settlement Administrator shall divide the Net Settlement Amount by the total number of weeks included in the dates of employment to determine a dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement Share. (Agreement at ¶ III(40)(b).) Workweeks will be based on Defendant's records, however Class Members will have the right to challenge their workweeks. Decl. Nordrehaug at ¶17.

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ III(42)(c), Ex. A.) All Class Members who do not "opt out" will be deemed Participating Class Members who will be bound by the Settlement and will be entitled to receive an Settlement Share. Finally, the Class Notice will also advise the Class Members of their right to object to the Settlement and/or dispute their workweeks. (Agreement at ¶ III(42)(c), Ex. A.) Decl. Nordrehaug at ¶18.

A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed. (Agreement at ¶III(42)(f).) The Settlement Administrator will send a reminder to Participating Class Members who have not cashed their checks within 120 days after its last mailing to the affected individual. (Agreement at ¶ III(42)(f).) Any settlement checks not cashed within 180 days will be voided and any the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. (Agreement at ¶ III(44)(j).) Decl. Nordrehaug at ¶19.

The Parties have agreed to use Simpluris as the Settlement Administrator. (Agreement at ¶ III(41).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed \$5,000. (Agreement at ¶ III(39)(d).) Decl. Nordrehaug at ¶20.

1 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
2 to exceed one-third (1/3) of the Gross Settlement Amount, as the Class Counsel Fees Payment.
3 (Agreement at ¶ III(39)(b).) Class Counsel will also be allowed to apply separately for an award of
4 Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶
5 III(39)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$6,500
6 to each Plaintiff as their Class Representative Service Payments. (Agreement at ¶ III(39)(a).) Decl.
7 Nordrehaug at ¶21.

8 The Parties will seek approval from the Court for the PAGA Payment of \$10,000 out of the
9 Gross Settlement Amount, which shall be allocated 75% (\$7,500) to the LWDA as the LWDA's share
10 of the PAGA Payment pursuant to PAGA and 25% (\$2,500) will be distributed to the Aggrieved
11 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
12 III(39)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
13 to the release of the PAGA claims, whether or not they opt out of the Settlement. (Agreement at ¶
14 III(39)(c).) As set forth in the accompany proof of service, the LWDA has been served with this
15 motion and the Agreement. Decl. Nordrehaug at ¶22.

16 **III. CASE BACKGROUND**

17 The description of the case and claims, along with the procedural history is set forth in the
18 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
19 exchange of documents and information in connection with the Action which permitted Class Counsel
20 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
21 in mediation with Mark Rudy on July 27, 2021, which after arm's length negotiations, resulted in this
22 Settlement. Decl. Nordrehaug, ¶12.

23 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 24 **GRANT PRELIMINARY APPROVAL**

25 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
26 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
27 California "[p]ublic policy generally favors the compromise of complex class action litigation."
28 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*

1 Cases, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
2 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
3 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
4 denied, 459 U.S. 1217 (1983)).

5 Preliminary approval is the first of three steps that comprise the approval procedure for
6 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
7 members. The third step is a final settlement approval hearing, at which evidence and argument
8 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
9 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
10 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

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

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

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

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

9 If the proposed settlement appears to be the product of serious, informed, noncollusive
10 negotiations, has no obvious deficiencies, does not improperly grant preferential
11 treatment to class representatives or segments of the class, and falls within the range of
12 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.

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

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

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

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

21 ³ The release applicable to the Class is tethered to allegations in the Action as follows: "Upon the
22 Effective Date, the Released Parties shall be released from the Participating Class Members of any and
23 all claims that were alleged or could have been alleged based on the facts in the operative complaint
24 in the Action which occurred or are alleged to have occurred during the Class Period ("Released Class
25 Claims"), including claims for violation California Business and Professions Code § 17200 *et seq.*; (2)
26 failure to pay overtime wages in violation of California Labor Code § 510, *et seq.*; (3) failure to pay
27 minimum wages in violation of California Labor Code §§ 1194, 1197, & 1197.1; (4) failure to provide
28 required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC
Wage Order; (5) failure to provide required rest periods in violation of California Labor Code
§§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to reimburse employees for required
expenses in violation of California Labor Code § 2802; (7) failure to provide accurate itemized wage
statements in violation of California Labor Code § 226; (8) failure to provide wages when due in

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

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

17 As consideration for this Settlement, the Gross Settlement Amount is Three Hundred Thirty
18 Thousand Dollars (\$330,000.00). The Settlement is all-in with no reversion to Defendant and no need
19 to submit a claim form. Decl. Nordrehaug at ¶ 3.

20 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
21 the course of a year, Class Counsel has diligently evaluated the Class Members' claims against
22 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
23 access to necessary information for the Class. In addition, Class Counsel previously negotiated
24 settlements with other employers in actions involving nearly identical issues and analogous defenses.

25 _____
26 violation of California Labor Code §§ 201, 202 and 203; and (9) violation of the Private Attorney
27 General Act, Cal. Labor Code §§ 2698, *et seq.* ("PAGA") based upon the forgoing alleged violations.
28 This release expressly excludes all other claims, including claims for vested benefits, wrongful
termination, unemployment insurance, disability, social security, workers' compensation, and Class
claims outside of the Class Period." (Agreement at ¶ III(44)(a).)

1 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
2 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
3 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
4 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
5 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

20 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
21 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
22 receive payment according to the same formula. (Agreement at ¶ III(40).) The Net Settlement Amount
23 provides an average recovery of \$1,201 per Class Member and \$18 per work week. Decl. Nordrehaug,
24 ¶6.

25 The calculations to compensate for the amount due to the Class Members at the time this
26 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
27 mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for
28 putative class members and determined the potential maximum damages for the class claims. For the

1 Class, Plaintiffs determined that the maximum potential unpaid overtime due to the alleged
2 miscalculation of the regular rate was \$34,775, the potential off-the-clock damages were \$39,367 for
3 an alleged 5 min each day for donning and doffing, the maximum damages for unreimbursed expenses
4 were estimated to be \$34,040 based upon \$40 per month for cell phone usage, the alleged underpaid
5 meal and rest period premiums were \$2,296, and the meal period and rest period claims based upon
6 alleged on-duty policies had no monetary value because of the newly enacted Proposition 11 codified
7 in Labor Code §887 permitted the on-duty breaks. In total, the damages for the Class were calculated
8 to have a maximum total value of \$110,478. In addition, Plaintiffs calculated that the maximum value
9 of the waiting time penalties were \$147,685, and the maximum value of the wage statement penalties
10 were \$181,350, however, these wage statement and waiting time penalties claims potentially have a
11 much smaller value, even if damages were awarded, to the extent that they are only derivative of the
12 meal and rest break claims.⁴ Decl. Nordrehaug, ¶6.

13 Consequently, the Gross Settlement Amount represents more than the potential maximum
14 damages at issue for the Class in this case and 75% of the combination of the maximum damages and
15 maximum statutory penalties, assuming these amounts could all be proven in full at trial.⁵ The above
16 maximum calculations should then be adjusted in consideration for both the risk of certification and
17 the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
18
19

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

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

1 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁶
2 Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

3 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
5 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
6 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
7 argued that all work time was recorded and paid, and that there was no miscalculation of the regular
8 rate. Defendant contend that its meal and rest period policies fully complied with California law in
9 light of the enactment of Labor Code §887. Defendant's timekeeping system recorded meal periods
10 and paid some meal and rest premiums which meant that Defendant could therefore argue that any
11 missed meals were compensated. Further, Defendant argued that Defendant was not required to record
12 rest periods and that there was no evidence that rest periods were not provided given the facially lawful
13 policies. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
14 53 Cal. 4th 1004 (2012), weakens Plaintiffs' claims, on liability, value, and class certifiability as to the
15 meal and rest period claims. Defendant also argues that based on its facially lawful practices, it acted
16 in good faith and without willfulness, which if accepted would negate the claims for waiting time
17 penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is
18 questionable whether these penalties could be awarded at all based upon the alleged meal and rest
19 period violations. If successful, Defendant's defenses could eliminate or substantially reduce any
20 recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
21 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
22 Nordrehaug, ¶ 24.

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

15 After arm's length negotiations between experienced and informed counsel, the Parties
16 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
17 \$330,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

24 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
25 (9th Cir. 2000).)

26 3. **The Settlement Does Not Improperly Grant Preferential Treatment To** 27 **Class Representatives or Segments Of The Class**

28 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
Members are all determined under a neutral methodology. Each Participating Class Member will
receive the same opportunity to participate in and receive payment through a neutral formula that is

1 based upon the weeks worked by that individual. Decl. Nordrehaug, ¶4.

2 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
3 for the service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(39)(a).)
4 Plaintiffs performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
5 At this stage, the requested service award of \$6,500 is well within the accepted range of awards for
6 purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS
7 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
8 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
9 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*,
10 2008 WL 4473183, *7 (S.D. Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in
11 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding
12 \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As
13 explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
14 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
15 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
16 all employees. 2007 WL 221862 at *16-17.

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

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

28 Based on the foregoing data and their own independent investigation and evaluation, Class

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

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

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

14 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
15 213 F.3d at 459).

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

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

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

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

27 (Agreement at ¶ I(3).)

28 The "Class Period" is from from August 2, 2019 through October 27, 2021. (Agreement at ¶ I(11).)

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

30 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil

1 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
2 class certification is appropriate as follows:

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

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

12 While Defendant reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
13 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
14 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
15 settlement only. (Agreement at ¶ II(36).)

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

17 Plaintiffs bring this action on behalf of a Class of individuals during the applicable Class Period.
18 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
19 determined through examination of Defendant’s files. Given that the Class consists of approximately
20 62 members, Plaintiff maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44
21 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
22 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
23 assert that the 62 current and former employees that comprise the Class can be identified based on
24 Defendant’s records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

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

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

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

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

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

1 **E. The Class Representation Fairly and Adequately Protects 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 and have actively
6 participated in the prosecution of this case to date. They effectively communicated with counsel,
7 provided documents to counsel and participated in the investigation and negotiations in the Action.
8 Second, Plaintiffs retained competent counsel who are experienced in employment class actions and
9 who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests
10 of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief
11 under the same set of facts and legal theories. Defendant disputes that the adequacy requirement is
12 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. The Parties have

1 agreed upon procedures by which the Class Members will be provided with written notice of the
2 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
3 with the Agreement, Defendant will provide to the Settlement Administrator an electronic database
4 containing each Class Member's Class Data. (Agreement at ¶ III(42)(b)(i).) Within fourteen (14) days
5 after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all
6 Class Members via first-class U.S. Mail using the most current mailing address information available.
7 (Agreement at ¶ III(42)(b)(ii).) The Class Notice, drafted jointly and agreed upon by the Parties
8 through their respective counsel and to be approved by the Court, includes all relevant information. (See
9 Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i)
10 information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt
11 out; (iii) information to the Class Members regarding how to opt out and how to object to the
12 Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of
13 attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service award request; and
14 (vi) the anticipated expenses of the Settlement Administrator. The Parties agree that the Class Notice
15 Packet will also include a Spanish translation of the Class Notice. Decl. Nordrehaug at ¶32.

16 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
17 the Class Notice is mailed to them to request exclusion (opt-out) or to submit a written objection.
18 (Agreement at ¶ III(42)(c).) In the event of a re-mailing, the response deadline will be extended by an
19 additional 15 days. (Agreement at ¶ III(42)(c).) Class Members shall be given the opportunity to object
20 to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval
21 Hearing. (Agreement at ¶ III(42)(c)(i).) Class Members who do not submit a timely and proper request
22 to opt-out will automatically receive a payment of their Settlement Share. This notice program was
23 designed to meaningfully reach the Class Members and it advises them of all pertinent information
24 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
25 satisfies the requirements of due process and is the best notice practicable under the circumstances and
26 complies with Rules of Court 3.766 and 3.769(f).

27 **VIII. CONCLUSION**

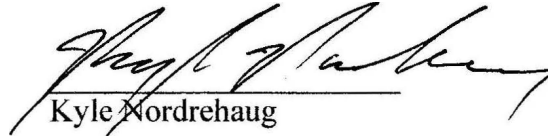
28 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and

1 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
2 fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary
3 Approval.

4 Dated: June 27, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By:



Kyle Nordrehaug
Attorney for Plaintiffs