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

MATTHEW RAMIREZ, ADAM
VILLASENOR, LUIS FLORES, STEVEN
SAEVANG, and PEDRO GUTIERREZ,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiff,

vs.

PREGIS INNOVATIVE PACKAGING
LLC, a Limited Liability Company;
MANPOWER, U.S. INC., a Corporation,
and Does 1 through 50, Inclusive,

Defendants.

Case No.: **VCU285886**
[Consolidated for All Purposes with
Case No. VCU285887]

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

Hearing Date: July 19, 2022
Hearing Time: 8:30 a.m.

Dept: 7
Judge: Hon. Bret Hillman

Action Filed: February 3, 2021
Trial Date: None set

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1 **I. INTRODUCTION**

2 Plaintiffs Matthew Ramirez, Adam Villasenor, Luis Flores, Steven Saevang, and Pedro
3 Gutierrez (“Plaintiffs”) respectfully submit this memorandum in support of the unopposed motion for
4 preliminary approval of the proposed class action settlement with Defendants Pregis Innovative
5 Packaging LLC (“Pregis”) and Manpower, U.S. Inc. (“Manpower”) (collectively “Defendants”), and
6 seek entry of an order: (1) preliminarily approving the proposed settlement of this class action with
7 Defendants; (2) for settlement purposes only, conditionally certifying the Class, which is comprised
8 of “all individuals who are or previously were employed by Defendant Pregis and all individuals who
9 were employed by Defendant Manpower and assigned to work at a Pregis facility in California who
10 were classified as hourly non-exempt employees at any time during the Class Period” of May 8, 2018
11 through February 21, 2022; (3) provisionally appointing Plaintiffs as the representatives of the Class;
12 (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas
13 J. De Blouw, and Jeffrey S. Herman of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class
14 Counsel for the Class; (5) approving the form and method for providing class-wide notice; (6) directing
15 that notice of the proposed settlement be given to the class; (7) appointing ILYM Group as Settlement
16 Administrator, and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion for final
17 approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys’
18 fees and expenses.

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

24 As consideration for this Settlement, the Gross Settlement Amount is Seven Hundred Fifty
25 Thousand Dollars (\$750,000) to be paid by Pregis, as set forth in the Agreement. The Gross Settlement
26 Amount will settle all issues pending in the Action between the Parties and will be made in full and
27

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

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

7 On December 21, 2021, the Parties participated in an all-day mediation presided over by Jeffrey
8 Krivis, a respected mediator of wage and hour representative and class actions. Following the
9 mediation, the Parties were able to agree to settle the Action based upon a mediator's proposal which
10 was memorialized in a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is
11 fair, reasonable and adequate, and should be preliminarily approved because there is a substantial
12 monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiffs
13 respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed
14 order submitted herewith.

15 **II. DESCRIPTION OF THE SETTLEMENT**

16 The Gross Settlement Amount that Defendants will pay under this Settlement is Seven Hundred
17 Fifty Thousand Dollars (\$750,000) with Manpower to contribute \$20,000 and Pregis to pay the
18 remainder. (Agreement at ¶ I(19).) Under the Settlement, the Gross Settlement Amount consists of
19 the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees
20 Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses;
21 (4) Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Payment. (Agreement
22 at ¶ I(19).) The Gross Settlement Amount does not include Defendant's share of payroll taxes.
23 (Agreement at ¶ III(39).) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
24 (Agreement at ¶ III(39).) Decl. Nordrehaug at ¶15.

25 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
26 Defendant's share of payroll taxes within fifteen (15) business days of the Effective Date. (Agreement
27 at ¶ III(43)(j).) The Settlement Shares to Participating Class Members will be mailed by the Settlement
28 Administrator within fifteen (15) business days after the funding of the Gross Settlement Amount.

1 (Agreement at ¶ III(43)(j).) Decl. Nordrehaug at ¶16.

2 The Net Settlement Amount shall equal the net amount available for payment to the Class after
3 deducting the Court-approved amounts for the Class Representative Service Payments, the Class
4 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
5 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be
6 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
7 (“Participating Class Members”). (Agreement at ¶¶ I(24) and III(41).) The Settlement Share will be
8 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
9 total number of weeks included in the dates of employment to determine a dollar amount per week
10 (“Weekly Rate”); and (iii) the Settlement Administrator shall then take the number of weeks worked
11 by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement
12 Share. (Agreement at ¶ III(41)(b).) Workweeks will be based on Defendant’s records, however, Class
13 Members will have the right to challenge the number of workweeks. Decl. Nordrehaug at ¶17.

14 Class Members may choose to opt-out of the Settlement by following the directions in the Class
15 Notice. (Agreement at ¶ III(43)(c)(iii) and Ex. A.) All Class Members who do not "opt out" will be
16 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
17 receive a Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their
18 allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims,
19 regardless of their request for exclusion. (Agreement at ¶ III(43)(c)(iii).) Finally, the Class Notice will
20 also advise the Class Members of their right to object to the Settlement and/or dispute their workweeks.
21 (Agreement at ¶ III(43)(c)(i)-(ii), Ex. A.) Decl. Nordrehaug at ¶18.

22 A Participating Class Member must cash his or her Settlement Share check within 180 days
23 after it is mailed. (Agreement at ¶III(43)(k).) The Settlement Administrator will send a reminder to
24 Participating Class Members who have not cashed their checks within 120 days after its last mailing
25 to the affected individual. (Agreement at ¶ III(43)(k).) Any settlement checks not cashed within 180
26 days will be voided and any funds from such uncashed checks will be paid to the California State
27 Controller’s Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at
28 ¶ III(43)(k).) Decl. Nordrehaug at ¶19.

1 The Parties have agreed to use ILYM Group as the Settlement Administrator. (Agreement at
2 ¶ III(42).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the
3 expenses of administering the Settlement in an amount not to exceed \$12,000. (Agreement at ¶
4 III(40)(d).) Decl. Nordrehaug at ¶20.

5 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
6 to exceed one-third (1/3) of the Gross Settlement Amount as the Class Counsel Fees Payment.
7 (Agreement at ¶ III(47)(b).) Class Counsel will also be allowed to apply separately for an award of
8 Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶
9 III(40)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
10 each to the Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ III(40)(a).) The
11 Class Counsel Fee Payment, Class Counsel Litigation Expenses Payment, and Class Representative
12 Service Payments shall all be paid from the Gross Settlement Amount. Decl. Nordrehaug at ¶21.

13 The Parties will seek approval from the Court for the PAGA Payment of \$20,000 out of the
14 Gross Settlement Amount, which shall be allocated 75% (\$15,000) to the LWDA as the LWDA's share
15 of the PAGA Payment pursuant to PAGA and 25% (\$5,000) will be distributed to the Aggrieved
16 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
17 III(40)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
18 to the release of the Released PAGA Claims, whether or not they opt out of the Class. (Agreement at
19 ¶ III(40)(c).) As set forth in the accompany proof of service, the LWDA has been served with this
20 motion and the Agreement. Decl. Nordrehaug at ¶22.

21 **III. CASE BACKGROUND**

22 The description of the cases and claims, along with the procedural history are set forth in the
23 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
24 exchange of documents and information in connection with the Action over more than two years which
25 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
26 14. The Parties participated in mediation on December 21, 2021 with Jeffrey Krivis, which after arm's
27 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

17 The primary question presented on an application for preliminary approval of a proposed class
18 action settlement is whether the proposed settlement is "within the range of possible approval."
19 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
20 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
21 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
22 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
23 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
24 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*

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 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
2 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
3 valuable benefits to the class ... that were 'particularly valuable in light of the risks plaintiff would have
4 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
5 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
6 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

15 In considering a potential settlement for preliminary approval purposes, the trial court does not
16 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
17 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
18 *supra*, 48 Cal.App.4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is
19 compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688
20 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
21 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "the
22 terms of the compromise with the likely rewards of litigation." *Weinberger v. Kendrick*, 698 F.2d 61,
23 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
24 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
25 settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might
26 have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

27 With regard to class action settlements, the opinions of counsel should be given considerable
28 weight both because of counsel's familiarity with this litigation and previous experience with cases

1 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
2 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
3 1988); *Weinberger*, 698 F.2d at 74. "The recommendations of plaintiffs' counsel should be given a
4 presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
5 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural*
6 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

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

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

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

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

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

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants

21 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
22 Claims" are "all class claims that were pled or could have been pled based on the factual allegations
23 contained in the operative complaint which occurred during the Class Period, including claims that have
24 been or could have been pled based on the facts of the operative complaint as to wage and hour
25 violations under local, state, and federal law, including, claims under the California Labor Code which
26 arose during the Class Period, and expressly excluding claims for vested benefits, wrongful termination,
27 unemployment insurance, disability, social security, workers' compensation, and class claims outside
28 of the Class Period ("Released Class Claims"). The Released Claims include the claims identified in
paragraph II(30) of this Agreement: (i) violation of California Business and Professions Code; (ii)
failure to pay overtime wages; (iii) failure to pay minimum wages; (iv) failure to provide required meal
periods; (v) failure to provide required rest periods; (vi) failure to provide accurate itemized wage
statements; (vii) failure to reimburse employees for required expenses; and (viii) failure to provide
wages when due". (Agreement at ¶ III(44)(a).)

1 is Seven Hundred Fifty Thousand Dollars (\$750,000). The Settlement is all-in with no reversion to
2 Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

27 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
28 possible approval. All Class Members will receive an opportunity to participate in the Settlement and

1 receive payment according to the same formula. (Agreement at ¶ III(41)(b).) For the estimated 248
2 individuals in the Class who collectively worked 26,246 weeks, the Gross Settlement Amount provides
3 an average value of \$3,024 per Class Member and \$28 per workweek, and after deductions, the Net
4 Settlement Amount provides an average recovery of \$1,604 per Class Member and \$15 per work week.
5 Decl. Nordrehaug, ¶6.

6 The calculations to compensate for the amount due to the Class Members at the time this
7 Settlement was negotiated were calculated in advance of mediation. For the individuals whose claims
8 are at issue in this Action, Plaintiffs analyzed the data for putative class members and determined the
9 potential maximum damages for the class claims. For the Class, Plaintiffs determined that the
10 maximum potential unpaid overtime due to the alleged miscalculation of the regular rate and the Ferra
11 claim was \$5,813, the maximum potential unpaid wages due to the alleged off-the-clock temperature
12 checks was \$99,314, the maximum potential meal period damages were estimated to be \$689,372 based
13 upon an alleged 38.5% violation rate evidenced in the time punch records, after deducting the meal
14 premiums paid by Defendants, the maximum rest period damages were estimated to be \$2,107,484
15 based upon a 100% violation rate, and the maximum damages for unreimbursed expenses were
16 estimated to be \$167,672 based upon cell phone expense of \$30 per month. In total, the damages for
17 the Class were calculated to have a maximum total value of \$3,069,655. In addition, Plaintiffs
18 calculated that the maximum value of the waiting time penalties was between \$144,772 and \$339,44,
19 depending on the predicate violation, and the maximum value of the wage statement penalties were
20 \$601,600, however, these wage statement and waiting time penalties claims potentially had a much
21 smaller value, even if damages were awarded, to the extent that they are only derivative of the meal and
22 rest break claims.⁴ Defendants dispute Plaintiffs' estimates and believes the amount they can recover

23
24 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
25 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by
26 Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages
27 for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs were
28 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."). Additionally, Courts have held that violations of the meal and rest
period regulations, which require payment of a "premium wage" for each improper meal period, do **not**

1 for themselves and the Class, if anything at all, is actually much lower. Decl. Nordrehaug, ¶6.

2 Consequently, the Gross Settlement Amount represents more than 24% of the value of the
3 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
4 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
5 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
6 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
7 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

8 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
9 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
10 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
11 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
12 argued that all work time was recorded and paid. Defendants contend that their meal and rest period
13 policies fully complied with California law, that Defendants' timekeeping system recorded meal
14 periods, and that meal periods were provided. Defendants also argued that meal period premiums were
15 paid when a meal period was not provided, which negated the meal period claim. Further, Defendants
16 argued that Defendants were not required to record rest periods and that there was no evidence that rest
17 periods were not provided given the facially lawful policies. Finally, Defendants could argue that the

18
19
20 give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal.
21 App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336
(2018). As a result, at the time of mediation the viability of Plaintiff's claims on these theories was
uncertain.

22
23 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.

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
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
28 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 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakens Plaintiffs'
2 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also
3 argue that based on their facially lawful practices, they acted in good faith and without willfulness,
4 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
5 statements. Under the state of the law at the time of mediation, it was questionable whether these
6 penalties could be awarded at all based upon the alleged meal and rest period violations. If successful,
7 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While
8 Plaintiffs believe that these defenses could be overcome, Defendant smaintain these defenses have merit
9 and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

10 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
11 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
12 Defendants argued that the individual experience of each putative class member varied with respect to
13 the claims. Defendants could also contest class certification by arguing injury and good faith were case
14 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
15 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
16 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
17 contended that individual differences in work experiences not only impacted damages but would also
18 impact certification. Finally, even if class certification was successful, as demonstrated by the
19 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
20 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
21 While other cases have approved class certification in wage and hour claims, class certification in this
22 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
23 ¶ 25.

24 After arm's length negotiations between experienced and informed counsel, the Parties
25 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
26 \$750,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

1 would have appealed, and the parties would have faced the expense and uncertainty of
2 litigating an appeal. 'The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement.'"

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

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

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

12 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
13 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(40)(a).)
14 Plaintiffs performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
15 At this stage, the requested service award amount of \$10,000 each is well within the accepted range of
16 awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
17 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
18 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
19 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
20 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
21 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
22 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
23 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
24 representatives to compensate the employees for the time and effort expended on the case, for the risk
25 of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive
26 to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

The stage of the proceedings at which this Settlement was reached also militates in favor of

1 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
2 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
3 Members' claims before the Action was filed. Class Counsel engaged in extensive formal discovery
4 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
5 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
6 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
7 possessed sufficient information to make an informed judgment regarding the likelihood of success on
8 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

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

23 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
24 213 F.3d at 459).

25 Here, Class Counsel was in far better position to evaluate the fairness of this Settlement because
26 Class Counsel performed informal discovery, received all necessary information which was analyzed,
27 and also performed independent investigations and due diligence to confirm the accuracy of the
28 information supplied by Defendants.

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

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

6 All individuals who are or previously were employed by Defendant Pregis and all
7 individuals who were employed by Defendant Manpower and assigned to work at a
8 Pregis facility in California who were classified as hourly non-exempt employees at any
time during the Class Period.

9 (Agreement at ¶ I(3).)

10 The “Class Period” is May 8, 2018 through February 21, 2022. (Agreement at ¶ I(10).)

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

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

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

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

20 While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
21 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
22 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
23 settlement only. (Agreement at ¶ II(35).)

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

25 Plaintiffs bring this action on behalf of a Class of individuals during the applicable Class Period.
26 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
27 determined through examination of Defendants’ files. Given that the Class consists of approximately
28 248 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*,

44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 248 current and former employees that comprise the Class can be identified based on Defendants' records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg 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 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

Here, Plaintiffs contend that common questions of law and fact are present, and specifically the common questions of whether Defendants properly compensated for alleged overtime, whether the Defendants failed to provide meal and rest periods, whether class members were lawfully compensated for all hours worked, whether Defendants failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendants disputes that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

The typicality requirement requires the Plaintiffs to demonstrate that the members of the class have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth

1 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
2 reasonably coextensive with those of absent class members; they need not be substantially identical.”

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

12 **E. The Class Representation Fairly and Adequately Protected the Class**

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

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

25 To certify a class, the Court must also determine that a class action is superior to other available
26 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
27 common issues will reduce litigation costs and promote greater efficiency, a class action may be
28 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.

1996). As courts have previously observed:

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

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

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, Defendants do not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendants will provide to the Settlement Administrator an electronic database containing each Class Member’s Class Data. (Agreement at ¶ III(43)(c)(i).) Within 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ III(43)(c)(ii).) The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award requests; and (vi) the anticipated expenses of the Settlement Administrator. The Class Notice Packet mailed to the Class Members will include a Spanish translation. (Agreement at ¶I(9).) Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement

1 at ¶ III(43)(d).) In the event of a re-mailing, this deadline will be extended by an additional 15 days.
2 Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys'
3 fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(43)(d)(i).) Class
4 Members who do not submit a timely and proper request to opt-out will automatically receive a
5 payment of their Settlement Share. This notice program was designed to meaningfully reach the Class
6 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
7 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
8 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
9 3.769(f).

10
11 **VII. CONCLUSION**

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

15 Dated: June 17, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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18 By: /s/ Kyle Nordrehaug
19 Kyle R. Nordrehaug, Esq.
20 Attorney for Plaintiffs
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