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

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

15 **HILARY CEARLY and YEKATERINA**
16 **KUCHEROVA, et al.,**

17 Plaintiffs,

18 vs.

19 **UNIVERSITY RETIREMENT**
20 **COMMUNITY AT DAVIS, INC., a**
21 **Corporation; PACIFIC RETIREMENT**
22 **SERVICES, INC., a Corporation; and**
23 **DOES 1 through 50, inclusive,**

24 Defendants.

Case No. CV2021-0524

[Consolidated with Case No. CV2021-0531]

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

Hearing Date: September 27, 2022

Hearing Time: 9:00 a.m.

Judge: Hon. Samuel T. McAdam

Dept: 10

Action Filed: March 26, 2021

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Hilary Cearley and Yekaterina Kucherova (“Plaintiffs”) respectfully submit this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendants University Retirement Community at Davis, Inc., and Pacific Retirement
5 Services, Inc. (“Defendants”), and seek entry of an order: (1) preliminarily approving the proposed
6 settlement of this class action with Defendants; (2) for settlement purposes only, conditionally
7 certifying the Class, which is comprised of “all individuals who are or previously were
8 employed by Defendants in California who were classified as hourly, non-exempt employees
9 at any time during the Class Period” of March 26, 2017 through May 1, 2022; (3) provisionally
10 appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman
11 B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, and Jeffrey S.
12 Herman of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class;
13 (5) approving the form and method for providing class-wide notice; (6) directing that notice of
14 the proposed settlement be given to the class; (7) appointing ILYM Group as Settlement
15 Administrator, and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion
16 for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for
17 approval of attorneys' fees and expenses.

18 Plaintiffs and Defendants (collectively the “Parties”) have reached a full and final settlement
19 of 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 Seven Hundred Thousand
23 Dollars (\$700,000.00) to be paid by Defendants, as set forth in the Agreement. The Gross Settlement
24 Amount will settle all issues pending in the Action between the Parties and will be made in full and
25 final settlement of the Released Class Claims. The Gross Settlement Amount includes all payments
26 of Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class
27

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

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

5 On January 26, 2022, the Parties participated in an all-day mediation session presided over by
6 Tripper Ortman, Esq., a respected and experienced mediator of wage and hour class actions. Following
7 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
8 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
9 substantial monetary payment, and there are substantial litigation and class-certification risks.
10 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
11 and enter the proposed order submitted herewith.

12 **II. DESCRIPTION OF THE SETTLEMENT**

13 The Gross Settlement Amount is Seven Hundred Thousand Dollars (\$700,000.00). (Agreement
14 at ¶I(19).) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
15 payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class Counsel
16 Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class Representative
17 Service Payments to the Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶I(19).) The Gross
18 Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶III(35).) The
19 Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶III(35).)
20 Decl. Nordrehaug at ¶15.

21 Defendant shall fund the Gross Settlement Amount within fifteen (15) days of the Effective
22 Date. (Agreement at ¶III(42).) The Settlement Shares to Participating Class Members will be mailed
23 by the Settlement Administrator fifteen (15) days after Defendant fully funds the Gross Settlement
24 Amount. (Agreement at ¶III(42).) Decl. Nordrehaug at ¶16.

25 The Net Settlement Amount shall equal the net amount available for payment to the Class after
26 deducting the Court-approved amounts for the Class Representative Service Payments, the Class
27 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
28 Settlement Administration Expenses. (Agreement at ¶I(21).) The Net Settlement Amount will be

1 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
2 (“Participating Class Members”). (Agreement at ¶¶ I(24), III(37).) The Settlement Share will be
3 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
4 total number of weeks included in the dates of employment to determine a dollar amount per week
5 (“Weekly Rate”); and (iii) the Settlement Administrator shall then take the number of weeks worked
6 by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement
7 Share. (Agreement at ¶ III(37)(b).) Workweeks will be based on Defendants’ records, however Class
8 Members will have the right to challenge the number of workweeks. Decl. Nordrehaug at ¶17.

9 Class Members may choose to opt-out of the Settlement by following the directions in the Class
10 Notice. (Agreement at ¶ III(39)(d), Ex. A.) All Class Members who do not "opt out" will be deemed
11 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
12 Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their allocation
13 of the PAGA Payment, respectively, and will remain bound by the release of the Released PAGA
14 Claims, regardless of their request for exclusion. (Agreement at ¶ III(39)(d)(iii).) Finally, the Class
15 Notice will also advise the Class Members of their right to object to the Settlement and/or dispute their
16 workweeks. (Agreement at ¶ III(39)(d), Ex. A.) Decl. Nordrehaug at ¶18.

17 A Participating Class Member must cash his or her Settlement Share check within 180 days
18 after it is mailed. (Agreement at ¶ III(43).) The Settlement Administrator will send a reminder to
19 Participating Class Members who have not cashed their checks 60 days before the expiration date.
20 (Agreement at ¶ III(43).) Any settlement checks not cashed within 180 days will be voided and any
21 funds from such uncashed checks will be paid to the California State Controller’s Unclaimed Property
22 Fund in the name of the individual who failed to cash their check. (Agreement at ¶ III(43).) Decl.
23 Nordrehaug at ¶19.

24 Based upon the lowest bid received, the Parties have agreed to use ILYM Group as the
25 Settlement Administrator. (Agreement at ¶ III(38).) From the Gross Settlement Amount, the
26 Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount
27 not to exceed \$15,000. (Agreement at ¶ III(36)(d).) Decl. Nordrehaug at ¶20.

28 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not

1 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
2 at ¶ III(36)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
3 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ III(36)(b).) Subject
4 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to Plaintiffs
5 as the Class Representative Service Payments. (Agreement at ¶ III(36)(a).) Decl. Nordrehaug at ¶21.

6 The Parties will seek approval from the Court for the PAGA Payment of \$15,000 out of the
7 Gross Settlement Amount, which shall be allocated 75% (\$11,250) to the LWDA as the LWDA's share
8 of the PAGA Payment pursuant to PAGA and 25% (\$3,750) will be distributed to the Aggrieved
9 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
10 III(36)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
11 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement
12 at ¶ III(36)(c).) As set forth in the accompany proof of service, the LWDA has been served with this
13 motion and the Agreement. Decl. Nordrehaug at ¶22.

14 **III. CASE BACKGROUND**

15 The description of the case and claims, along with the procedural history is set forth in the
16 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
17 exchange of documents and information in connection with the Action which permitted Class Counsel
18 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
19 in mediation on January 26, 2022 with Tripper Ortman, Esq., which after arm's length negotiations,
20 resulted in this Settlement. Decl. Nordrehaug, ¶12.

21 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 22 GRANT PRELIMINARY APPROVAL**

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

1 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
2 denied, 459 U.S. 1217 (1983)).

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

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

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

24 The approval of a proposed settlement of a class action suit is a matter within the broad

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

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

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

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

28 A number of factors are to be considered in evaluating a settlement for purposes of preliminary

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

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

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

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

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

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

19
20
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, rights, demands, liabilities, penalties, wages, and causes of action that
23 were pled or could have been pled based on the factual allegations contained in the operative complaint
24 which occurred during the Class Period and expressly excluding all other claims, including claims for
25 vested benefits, wrongful termination, unemployment insurance, disability, social security, workers'
26 compensation, and class claims outside of the Class Period ("Released Class Claims")." The Released
27 Class Claims specifically include claims for (1) Unfair Competition; (2) Unpaid Minimum Wages; (3)
28 Unpaid Overtime; (4) Failure to Provide Meal Periods, (5) Failure to provide Rest Periods; (6) Failure
to Reimburse for Business Expenses; (7) Inaccurate Wage Statements; (8) Waiting Time Penalties; and
(9) Civil Penalties under PAGA during the Class Period, and includes claims arising under the
following Labor Code statutes which are based on the facts and circumstances alleged in the Complaint:
201 – 204; 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
Code of Regulations, Title 8, Section 11040 Subdivision 5(A)-(B), and the applicable Industrial Wage
Order(s)." (Agreement at ¶ III(45)(a).)

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 Tripper Ortman, a respected and
10 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
11 for the mediation, Defendants 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. Plaintiffs
13 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
14 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
15 agreed to this Settlement. The final settlement terms were negotiated and set forth in the Agreement
16 now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class
17 Counsel believe that this Settlement is fair, reasonable and adequate.

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
19 is Seven Hundred Thousand Dollars (\$700,000.00). The Settlement is all-in with no reversion to
20 Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

1 circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential
2 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

17 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
18 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
19 receive payment according to the same formula. (Agreement at ¶ III(37)(b).) For the 461 Class
20 members who worked 52,000 work weeks, the Gross Settlement Amount provides an average value
21 of \$1,518 per Class Member and \$13 per work week, and after deductions, the Net Settlement Amount
22 provides an average recovery of \$860 per Class Member and \$7.62 per work week. Decl. Nordrehaug,
23 ¶6.

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

1 regular rate was potentially \$6,861, the maximum potential meal period damages, after deducting meal
2 premiums paid by Defendant, wages were estimated to be \$221,841, the maximum potential rest period
3 damages, after deducting rest period premiums paid by Defendant, were estimated to be \$3,310,842
4 based upon a 100% violation predicated on a premise restriction theory, the maximum potential
5 damages for off the clock work for Covid testing were estimated to be \$11,610, and the maximum
6 potential damages for failure to provide expense reimbursement for cell-phones was calculated to be
7 \$123,029. In total, the damages for the Class were calculated to have a maximum potential total value
8 of \$3,674,184. In addition, Plaintiffs calculated that the maximum value of the potential waiting time
9 penalties were between \$293,085 and \$1,069,365, depending on the predicate violation, and the
10 maximum value of the potential wage statement penalties were \$879,800. These wage statement and
11 waiting time penalties claims potentially have a much smaller value or no value, even if damages were
12 awarded, to the extent that they are only derivative of the rest break claims.⁴ Decl. Nordrehaug, ¶6.

13 Consequently, the Gross Settlement Amount represents more than 19% of the value of the
14 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
15 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
16 both the risk of class certification and the risk of establishing class-wide liability on all claims. In
17 addition, because a prior class settlement resolved one year of the five years in Plaintiffs' valuation,
18

19 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by
21 Defendants, including, but not limited to, a good faith dispute defense as to whether any premium
22 wages for meal or rest periods or other wages were owed given Defendants' position that Plaintiffs
23 were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
24 ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as
25 to whether and when the wages were due."). Additionally, at the time of mediation, Courts had held
26 that violations 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 e.g. 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 at the time the settlement was negotiated.

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

1 the above valuations could be overstated by 20% across the board. Given the amount of the Settlement
2 as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁶
3 Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

4 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
5 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
6 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
7 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendant
8 argued that all work time was paid for and that the regular rate was properly calculated when paying
9 wages. Defendant contend that their meal and rest period policies fully complied with California law
10 and that Defendants' timekeeping system recorded meal periods, and was not required to record rest
11 periods. Defendants argued that the fact they paid significant meal and rest period premiums
12 establishes that their practices were compliant when a meal or rest was missed. Plaintiffs' theory of
13 liability for rest breaks was based upon an on premise restriction, which Defendant disputed and argued
14 that this theory has been rejected by Courts as sufficient alone to establish liability for on-duty rest
15 breaks. See, e.g., *Ritenour v. Carrington Mortg. Servs., LLC*, 2018 WL 5858658, at *7 (C.D. Cal.
16 2018) (holding that defendant's on-premises rest period policy was facially valid and legal); *Hubbs v.*
17 *Big Lots Stores, Inc.*, 2018 WL 5264141, at *5 (C.D. Cal. 2018) (citing *Augustus* and dismissing
18 on-premises rest period claims for failure to state a claim); *Bell v. Home Depot U.S.A., Inc.*, 2017 WL
19 1353779, at *2 (E.D. Cal. 2017) (declaring defendant's argument that *Augustus* implied on-premises
20 rest periods were legal as "more persuasive and accurate" than plaintiff's argument to the contrary). As
21 to expenses reimbursement, Defendant contended that it did not fail to pay for business expenses and
22 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally

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 required. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior*
2 *Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability
3 as to the meal and rest period claims. Defendants also argue that based on their facially lawful
4 practices, they acted in good faith and without willfulness, which if accepted would negate the claims
5 for waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could
6 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
7 could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk
8 to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

21 After arm's length negotiations between experienced and informed counsel, the Parties
22 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
23 \$700,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

(9th Cir. 2000)).

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

The relief provided in the Settlement will benefit all members of the Class. The Settlement does not grant preferential treatment to 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 based upon the weeks worked by that individual. Decl. Nordrehaug, ¶4.

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(36)(a).) Plaintiffs performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. At this stage, the requested service award of \$10,000 is well within the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims

1 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
2 informed by a prior Court-approved class settlement with Defendants which covered a similar length
3 of time and was resolved for a similar settlement amount of \$700,000, but on a claims-made basis with
4 a reversion to the Defendants ultimately equaling \$200,000, thus establishing this settlement as
5 superior. Class Counsel was also experienced with the claims at issue here, as Class Counsel
6 previously litigated and settled similar claims in other actions. Accordingly, the agreement to settle did
7 not occur until Class Counsel possessed sufficient information to make an informed judgment regarding
8 the likelihood of success on the merits and the results that could be obtained through further litigation.
9 Decl. Nordrehaug at ¶28.

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

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

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

24 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
25 213 F.3d at 459).

26 Here, Class Counsel was in an equally knowledgeable position to evaluate the fairness of this
27 Settlement because Class Counsel received all necessary information which was evaluated with the
28 assistance of an expert, and also performed independent investigations and due diligence to confirm
the accuracy of the information supplied by Defendant.

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

2 Plaintiffs contend that the proposed settlement meets 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 Defendants in California who
7 were classified as hourly, non-exempt employees at any time during the Class Period.

8 (Agreement at ¶ I(3).)

9 The “Class Period” is from March 26, 2017 through May 1, 2022. (Agreement at ¶ I(10).)

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

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

14 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
15 of a common or general interest, of many persons, or when the parties are numerous,
16 and it is impracticable to bring them all before the court...” The party seeking
17 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.

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

19 While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
20 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
21 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
22 settlement only. (Agreement at ¶ II(33).)

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

24 Plaintiffs bring this Action on behalf of a Class of individuals during the applicable Class
25 Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can
26 readily be determined through examination of Defendants’ files. Given that the Class consists of
27 approximately 461 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
28 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*

1 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
2 Here, Plaintiffs assert that the 461 current and former employees that comprise the Class can be
3 identified based on Defendants' records and are sufficiently numerous for class certification. Decl.
4 Nordrehaug at ¶30.

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

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

11 Commonality exists if there is a predominant common legal question regarding how an
12 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
13 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
14 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
15 certification stage since the question is "essentially a procedural one that does not ask whether an action
16 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

17 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
18 common questions of whether Defendants properly calculated the regular rate when paying wages,
19 whether the Defendants failed to provide meal and rest periods to class members, whether class
20 members were lawfully compensated for all hours worked, whether Defendants failed to provide
21 required expense reimbursement, and whether Class Members are entitled to damages and penalties as
22 a result of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that common questions
23 predominate but will not oppose such a finding for purposes of this Settlement only.

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

25 The typicality requirement requires the Plaintiffs to demonstrate that the members of the Class
26 have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims
27 of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v.*
28 *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 Defendant 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 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 dispute typicality but Defendants do not oppose a finding of typicality for
12 purposes of this Settlement only.

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

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

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

26 To certify a class, the Court must also determine that a class action is superior to other available
27 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
28 common issues will reduce litigation costs and promote greater efficiency, a class action may be

1 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
2 1996). As courts have previously observed:

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

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

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

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

14 The Court has broad discretion in approving a practical notice program. The Parties have
15 agreed upon procedures by which the Class Members will be provided with written notice of the
16 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
17 with the Agreement, Defendants will provide to the Settlement Administrator a confidential electronic
18 spreadsheet containing the Class Data. (Agreement at ¶ III(39)(c).) Within 14 days after receiving the
19 Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via
20 first-class U.S. Mail using the most current mailing address information available. (Agreement at
21 ¶ III(39)(c).) The Class Notice, drafted jointly and agreed upon by the Parties through their respective
22 counsel and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the
23 Agreement.) The Class Notice will include, among other information: (i) information regarding the
24 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the
25 Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated
26 Settlement Share for each of the Class Members; (v) the amount of attorneys’ fees and expenses to be
27 sought; (vi) the amount of the Plaintiffs’ service award requests; and (vii) the anticipated expenses of
28 the Settlement Administrator. Decl. Nordrehaug at ¶ 32.

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

(Agreement at ¶ III(39)(c).) In the event of a re-mailing, this deadline will be extended by an additional 15 days. Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(39)(c).) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Settlement Share. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

VII. CONCLUSION

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

Dated: August 30, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
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Attorney for Plaintiffs