

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

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

ERYN WHITE, on behalf of himself and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

ADVANCED HOME HEALTH, INC.,
California Corporation; ADVANCED
HOMES HEALTH HOSPICE, INC. a
California Corporation; ADVANCED
HOME HEALTH NORTHBAY, INC. a
California Corporation; ADVANCED
HOME HEALTH SAN DIEGO, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Lead Case No.: **34-2021-00295374**

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

Hearing Date: February 24, 2022

Hearing Time: 9:00 a.m.

Reservation No. 2615483

Dept.: 54

Judge: Hon. Christopher E. Krueger

Lead Action Filed: February 26, 2021

Trial Date: Not set

TABLE OF CONTENTS

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

TABLE OF AUTHORITIES

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

1	<i>In re Tableware Antitrust Litig.</i> ,	
2	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
3	<i>In re Wash. Public Power Supply System Sec. Litig.</i> ,	
4	720 F. Supp. 1379 (D. Ariz. 1989)	6, 9
5	<i>Kirkorian v. Borelli</i> ,	
6	695 F. Supp. 446 (N.D. Cal. 1988)	6
7	<i>Kullar v. Foot Locker</i> ,	
8	168 Cal. App. 4th 116 (2008)	8
9	<i>Linder v. Thrifty Oil Co.</i> ,	
10	23 Cal. 4th 429 (2003)	15
11	<i>Ling v. P.F. Chang's China Bistor, Inc.</i> ,	
12	245 Cal. App. 4th 1242 (2016)	10
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
14	2008 WL 4473183 (S.D.Cal. 2008)	12
15	<i>Maldonado v. Epsilon Plastics, Inc.</i> ,	
16	22 Cal. App. 5th 1308 (2018)	10
17	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
18	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	12
19	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
20	221 F.R.D. 523 (C.D. Cal. 2004)	6
21	<i>Nordstrom Comm'n Cases</i> ,	
22	186 Cal. App. 4th 576 (2010)	4, 10
23	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	
24	688 F.2d. 615 (9th Cir. 1982)	5, 6
25	<i>Rose v. City of Hayward</i> ,	
26	126 Cal.App.3d 926 (1981)	15
27	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
28	34 Cal. 4th 319 (2004)	14, 15, 17
	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	5
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	10
	<i>Tate v. Weyerhaeuser Co.</i> ,	
	723 F.2d 598 (8th Cir. 1983)	16
	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
	97 F.3d 1227 (9th Cir. 1996)	17

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

1 **I. INTRODUCTION**

2 Plaintiff Eryn White (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 Advanced Home Health, Inc., Advanced Home Health and Hospice, Inc., Advanced Home Health
5 Northbay, Inc., Advanced Home Health San Diego, Inc. (collectively “Defendants”), and seeks entry
6 of an order: (1) preliminarily approving the proposed settlement of this class action with Defendants;
7 (2) for settlement purposes only, conditionally certifying the Class, which is comprised of “all
8 individuals who are or previously were employed by Defendants in California and who were classified
9 as non-exempt employees at any time during the Class Period”; (3) provisionally appointing Plaintiff
10 as the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
11 Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class
12 Counsel for the Class; (5) approving the form and method for providing class-wide notice; (6) directing
13 that notice of the proposed settlement be given to the class; (7) appointing Phoenix Settlement
14 Administrators as Settlement Administrator, and (8) scheduling a final approval hearing date to
15 consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and
16 Plaintiff’s motion for approval of attorneys' fees and expenses.

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

21 As consideration for this Settlement, the Gross Settlement Amount is Three Million One
22 Hundred Forty Thousand Dollars (\$3,140,000) to be paid by Defendants, as set forth in the Agreement.
23 The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will
24 be made in full and final settlement of the Released Class Claims. The Gross Settlement Amount
25 includes all payments of Settlement Shares to the Participating Class Members, Settlement
26 Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
27

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

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

5 On August 18, 2021, the Parties participated in an all-day mediation presided over by Francis
6 J. Ortman III, a respected mediator of wage and hour representative and class actions. Following the
7 conclusion of the mediation, the Parties reached an agreement to settle the Action based upon a
8 mediator's proposal. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and
9 should be preliminarily approved because there is a substantial monetary payment, and there are
10 substantial litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this
11 Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

12 **II. DESCRIPTION OF THE SETTLEMENT**

13 The Gross Settlement Amount is Three Million One Hundred Forty Thousand Dollars
14 (\$3,140,000). (Agreement at ¶ I(S).) Under the Settlement, the Gross Settlement Amount consists of
15 the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees
16 Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses;
17 (4) Class Representative Service Payment to the Plaintiff; and (5) the PAGA Payment. (Agreement at
18 ¶ I(S).) The Gross Settlement Amount does not include Defendants' share of payroll taxes.
19 (Agreement at ¶ III(A).) The Gross Settlement Amount shall be all-in with no reversion to Defendants.
20 (Agreement at ¶ III(A).) Decl. Nordrehaug at ¶15.

21 Defendants shall fund the Gross Settlement Amount and the amount necessary to pay
22 Defendants' share of payroll taxes within fifteen (15) calendar days of the Effective Date. (Agreement
23 at ¶ III(E)(9).) The Settlement Shares to Participating Class Members will be mailed by the Settlement
24 Administrator within fifteen (15) calendar days after the funding of the Gross Settlement Amount.
25 (Agreement at ¶ III(E)(9).) Decl. Nordrehaug at ¶16.

26 The Net Settlement Amount shall equal the net amount available for payment to the Class after
27 deducting the Court-approved amounts for the Class Representative Service Payment, the Class
28 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the

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

10 Class Members may choose to opt-out of the Settlement by following the directions in the Class
11 Notice. (Agreement at ¶ III(E)(3) and Ex. A.) All Class Members who do not "opt out" will be
12 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
13 receive a Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their
14 allocation of the PAGA Payment, respectively, and will remain bound by the release of the Released
15 PAGA Claims, regardless of their request for exclusion. (Agreement at ¶ III(E)(3)(c).) Finally, the
16 Class Notice will also advise the Class Members of their right to object to the Settlement and/or dispute
17 their workweeks. (Agreement at ¶ III(E)(3), Ex. A.) Decl. Nordrehaug at ¶18.

18 A Participating Class Member must cash his or her Settlement Share check within 180 days
19 after it is mailed. (Agreement at ¶III(E)(10).) The Settlement Administrator will send a reminder to
20 Participating Class Members who have not cashed their checks within 120 days after its last mailing
21 to the affected individual. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180
22 days will be voided and any funds from such uncashed checks will be paid to the California State
23 Controller’s Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at
24 ¶ III(E)(10).) Decl. Nordrehaug at ¶19.

25 Based upon the lowest bid received from qualified vendors, the Parties have agreed to use
26 Phoenix Settlement Administrators as the Settlement Administrator. (Agreement at ¶ III(D).) From
27 the Gross Settlement Amount, the Settlement Administrator shall be paid for the expenses of
28 administering the Settlement in an amount not to exceed \$12,000. (Agreement at ¶ III(B)(5).) Decl.

1 Nordrehaug at ¶20.

2 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
3 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
4 at ¶ III(B)(3).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
5 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ III(B)(3).) Subject
6 to Court approval, the Agreement provides for a payment of no more than \$10,000 to Plaintiff as the
7 Class Representative Service Payment. (Agreement at ¶ III(B)(1)). Decl. Nordrehaug at ¶21.

8 The Parties will seek approval from the Court for the PAGA Payment of \$75,000 out of the
9 Gross Settlement Amount, which shall be allocated 75% (\$56,250) to the LWDA as the LWDA's share
10 of the PAGA Payment pursuant to PAGA and 25% (\$18,750) will be distributed to the Aggrieved
11 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
12 III(B)(4).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
13 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement
14 at ¶ III(B)(4).) As set forth in the accompany proof of service, the LWDA has been served with this
15 motion and the Agreement. Decl. Nordrehaug at ¶22.

16 **III. CASE BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
22 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
23 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
24

25 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
26 Claims" are "any and all causes of action alleged in the operative complaint, or that could have been
27 alleged based upon the facts alleged in the operative complaint, which arose during the Class Period,
28 and expressly excluding all other claims, including claims for wrongful termination, unemployment
insurance, disability, social security, and workers' compensation, and claims outside of the Class
Period" (Agreement at ¶ III(F(1).))

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

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

15 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
16 is Three Million One Hundred Forty Thousand Dollars (\$3,140,000). The Settlement is all-in with no
17 reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

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

14 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
15 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
16 receive payment according to the same formula. (Agreement at ¶ III(C)(2).) The Gross Settlement
17 Amount provides an average value of \$4,875 per Class Member and \$80 per workweek, and after
18 deductions, the Net Settlement Amount provides an average recovery of \$3,061 per Class Member and
19 \$50 per work week. Decl. Nordrehaug, ¶6.

20 The calculations to compensate for the amount due to the Class Members at the time this
21 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
22 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
23 putative class members and determined the potential maximum damages for the class claims. For the
24 Class, Plaintiff determined that the unpaid wages due to the working during rest and recovery was
25 \$907,407, the potential off-the-clock damages were \$893,881 for non-productive work time, the
26 maximum potential meal period damages were estimated to be \$3,529,140, based upon an alleged 100%
27 violation rate, the maximum rest period damages were estimated to be \$3,575,526 based upon an
28 alleged 100% violation rate, and the maximum damages for unreimbursed mileage expenses were

1 estimated to be \$937,257 based upon the alleged underpayment. In total, the damages for the Class
2 were calculated to have a maximum total value of \$9,843,211. In addition, Plaintiff calculated that the
3 maximum value of the waiting time penalties were \$2,432,772 and the maximum value of the wage
4 statement penalties to be \$504,950, however, these wage statement and waiting time penalties claims
5 potentially have a much smaller value, even if damages were awarded, to the extent that they are only
6 derivative of the meal and rest break claims.⁴ Decl. Nordrehaug, ¶6.

7 Consequently, the Gross Settlement Amount represents more than 31% of the value of the
8 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
9 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
10 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
11 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
12 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

13 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
15 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.

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

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

26 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
27 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
28 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial.")

1 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
2 argued that all work time was recorded and paid for. Defendants contend that their meal and rest period
3 policies fully complied with California law and that although Defendants' timekeeping system recorded
4 meal periods, all meal periods were provided. Defendants paid some meal premiums and could
5 therefore argue that any missed meals were compensated. Further, Defendants argued that Defendants
6 were not required to record rest periods. Finally, Defendants could argue that the Supreme Court
7 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on
8 liability, value, and class certifiability as to the meal and rest period claims. Defendants also argue that
9 based on their facially lawful practices, they acted in good faith and without willfulness, which if
10 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. In fact,
11 under the current state of the law, it is questionable whether these penalties could be awarded at all
12 based upon the alleged meal and rest period violations. If successful, Defendants' defenses could
13 eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses
14 could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk
15 to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

¶ 25.

After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of \$3,140,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

In light of the above-referenced uncertainty in the law, the risk, expense, complexity, 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 would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be 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 Plaintiff 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.

Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for the service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(B)(1).) Plaintiff performed his duty 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

1 the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and
2 retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees.
3 2007 WL 221862 at *16-17.

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

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

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

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

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

27 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
28 213 F.3d at 459).

1 Here, Class Counsel was in far superior position to evaluate the fairness of this Settlement
2 because Class Counsel performed formal discovery, received all necessary information which was
3 evaluated with the assistance of an expert, and also performed independent investigations and due
4 diligence to confirm the accuracy of the information supplied by Defendants.

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

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

10 All individuals who are or previously were employed by Defendants in California and
11 who were classified as non-exempt employees at any time during the Class Period.

12 (Agreement at ¶ I(C).)

13 The “Class Period” is February 26, 2017 to August 18, 2021. (Agreement at ¶ I(J).)

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

15 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
16 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
17 class certification is appropriate as follows:

18 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
19 of a common or general interest, of many persons, or when the parties are numerous,
20 and it is impracticable to bring them all before the court....” The party seeking
21 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.

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

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

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

28 Plaintiff brings this action on behalf of a Class of individuals during the applicable Class Period.

1 Plaintiff asserts that all of these individuals are ascertainable because the class members can readily be
2 determined through examination of Defendants' files. Given that the Class consists of approximately
3 644 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
4 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
5 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiff
6 asserts that the 644 current and former employees that comprise the Class can be identified based on
7 Defendants' records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

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

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

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

20 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
21 common questions of whether Defendants properly compensated for rest and recovery time worked,
22 whether the Defendants failed to provide meal and rest periods, whether class members were lawfully
23 compensated for all hours worked during non-productive time, whether Defendants failed to provide
24 required mileage expense reimbursement, and whether Class Members are entitled to damages and
25 penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that common
26 questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

28 The typicality requirement requires the Plaintiff to demonstrate that the members of the class

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

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

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

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

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

28 To certify a class, the Court must also determine that a class action is superior to other available

1 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
2 common issues will reduce litigation costs and promote greater efficiency, a class action may be
3 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
4 1996). As courts have previously observed:

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

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

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

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

16 The Court has broad discretion in approving a practical notice program. The Parties have
17 agreed upon procedures by which the Class Members will be provided with written notice of the
18 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
19 with the Agreement, Defendants will provide to the Settlement Administrator an electronic database
20 containing each Class Member’s Class Data. (Agreement at ¶ III(E)(2)(a).) Within 14 days after
21 receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class
22 Members via first-class U.S. Mail using the most current mailing address information available.
23 (Agreement at ¶ III(E)(2)(b).) The Class Notice, drafted jointly and agreed upon by the Parties through
24 their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit
25 “A” to the Agreement.) The Class Notice will include, among other information: (i) information
26 regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii)
27 information to the Class Members regarding how to opt out and how to object to the Settlement; (iv)
28 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 Plaintiff’s service awards requests; and (vi) the anticipated
expenses of the Settlement Administrator. Decl. Nordrehaug at ¶32.

1 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
2 that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement
3 at ¶ III(E)(3).) In the event of a re-mailing, this deadline will be extended by an additional 15 days.
4 Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys'
5 fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(E)(3)(a).) Class
6 Members who do not submit a timely and proper request to opt-out will automatically receive a
7 payment of their Settlement Share. This notice program was designed to meaningfully reach the Class
8 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
9 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
10 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
11 3.769(f).

12 **VII. CONCLUSION**

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

17 Dated: January 12, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

19
20 By: 

Kyle R. Nordrehaug, Esq.
Attorney for Plaintiff