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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSE JAUREGUI and JAVIER DEL
REAL, individuals, on behalf of
themselves and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

CYTEC ENGINEERED
MATERIALS INC., a Delaware
corporation, CYTEC INDUSTRIES
INC., a Delaware corporation,
CYTEC AEROSPACE
MATERIALS (CA) INC., a
California corporation, CYTEC
PROCESS MATERIALS (CA) INC.,
a Delaware corporation, SOLVAY
USA INC., a Delaware corporation,
SOLVAY CHEMICALS, INC., a
Delaware corporation, and DOES 1
through 50, inclusive,

Defendants.

CASE No. **8:20-cv-02440-DOC-DFMx**

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

Hearing Date: January 31, 2022
Hearing Time: 8:30 a.m.

District Judge: Hon. David O. Carter
Ronald Reagan Federal Building and
United States Courthouse
Courtroom 9D

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1 **I. INTRODUCTION**

2 Plaintiffs Jose Jauregui and Javier Del Real (“Plaintiffs”) and Defendants Cytec
3 Engineered Materials Inc., Cytec Industries Inc., Cytec Aerospace Materials (CA) Inc.,
4 Cytec Process Materials (CA) Inc., Solvay USA Inc., and Solvay Chemicals, Inc.
5 (“Defendants”) have reached a full and final settlement of the above-captioned class
6 action, which is set forth in the Class Action Settlement Agreement (“Agreement”) filed
7 concurrently with the Court as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
8 Nordrehaug”).¹ By this motion, Plaintiffs seek preliminary approval of the Agreement
9 as fair, reasonable, and adequate, entry of the Preliminary Approval Order submitted
10 herewith, and scheduling of the Final Approval Hearing to determine final approval of
11 the Settlement.

12 **II. SUMMARY OF THE SETTLEMENT**

13 Counsel for Plaintiffs and Defendants (collectively the “Parties”), after litigation
14 and contentious settlement negotiations, agreed to a settlement that is fair, reasonable,
15 and favorable to the Class, which is defined as “individuals who are or previously were
16 employed by Defendants in California who were classified as non-exempt employees at
17 any time during the Class Period.” (Agreement at ¶ I(C).) Decl. Nordrehaug, ¶3.

18 Under the terms to which the Parties have agreed, Defendant agrees to pay the
19 maximum gross sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00)
20 (the “Gross Settlement Amount”) with no reversion in consideration for the settlement
21 and the release of claims as described in the Agreement. (Agreement at ¶ I(S).) Decl.
22 Nordrehaug, ¶4. This is an all-in Settlement with no reversion of any portion of the
23 Gross Settlement Amount to Defendants, and no claim form is required to be paid.

25 ¹ Capitalized terms have the same meaning as in the Agreement. Also attached as
26 Exhibit #1 is the Addendum to the Class Action Settlement Agreement which resolves
27 the pending grievances by Regina Aldana (“Aldana”) and Sandra Gutierrez (“Gutierrez”)
28 alleging wage and hour issues which overlap with the claims alleged in this Action in
exchange for \$1,000 to Aldana and Gutierrez.

1 (Agreement at ¶ I(S).) Class Members who do not opt-out of the Class by timely
2 submitting an opt-out request shall be automatically paid their share of the Net
3 Settlement Amount. (Agreement at ¶ III(D).) Decl. Nordrehaug, ¶5.

4 This is an excellent result for Class Members and Aggrieved Employees. The
5 litigation risks that the Plaintiffs, Class Members, and Aggrieved Employees face if the
6 case were not settled include, among other things, an adverse decision on contested class
7 certification and manageability, an adverse decision on the merits, loss of motions which
8 would result in limiting any exposure, the possibility that a trial would return a less
9 favorable verdict, and possible appellate review. Liability in this case was uncertain
10 because the trier of fact may have found that some or all of the Class Members and
11 Aggrieved Employees were properly compensated and/or that Defendants complied with
12 applicable law. Class Counsel and Plaintiffs wish to avoid these risks and uncertainties,
13 as well as the consumption of time and resources of litigation, through settlement
14 pursuant to the terms and conditions of the Agreement, which was reached through arm's
15 length negotiations before Louis Marlin, an experienced mediator of employment class
16 actions. Decl. Nordrehaug, ¶6.

17 **III. NATURE OF THE CASE**

18 The procedural history is set forth at length in the accompanying Declaration of
19 Nordrehaug at paragraphs 7 through 12, and is summarized below. Plaintiffs initially
20 filed the Class Action against Defendants in the Superior Court of California, Orange
21 County, and then also filed a separate PAGA Action against Defendants in the same
22 Court based on the same factual allegations. Decl. Nordrehaug, ¶¶ 7-8. First, the Class
23 Action, and then PAGA Action, were removed to federal court. Decl. Nordrehaug, ¶9.
24 On May 5, 2021, Plaintiffs filed the First Amended Complaint in the Class Action
25 pending in the United State District Court, Central District Complaint to add Plaintiff
26 Javier Del Real as a party and to add an additional claim for failure to provide wages
27 when due in violation of California Labor Code §§ 201-204, 233, 246 and 248. [Doc.
28 No. 40]. As part of this Settlement, the Class Action and the PAGA Action were

1 consolidated. [Doc. No. 49]. Decl. Nordrehaug, ¶9.

2 Class Counsel conducted significant research and investigation in furtherance of
3 the prosecution of the Action. This investigation, research and prosecution included,
4 among other things, (a) Rule 26 disclosures and multiple conferences between counsel
5 identifying, among other things, witnesses and documents with information relevant to
6 Plaintiffs and the class claims; (b) inspection and analysis of hundreds of pages of
7 documents and other information produced by Plaintiffs and Defendants during the
8 litigation of the Action and informally in preparation for mediation (including class
9 data); (c) analysis of the numerous legal positions taken by Defendants; (d) investigation
10 into the viability of class treatment of the claims; (e) analysis of potential class-wide
11 damages, including reviewing class data, and analyzing information sufficient to
12 understand Defendants' potential defenses; (f) research of the applicable law with respect
13 to the claims asserted as well as potential defenses; and (g) assembling and analyzing
14 extensive data and information for calculating damages. Decl. Nordrehaug, ¶10.

15 Class Counsel has extensive experience in litigating wage and hour class actions
16 and PAGA actions in California and has thoroughly analyzed the value of the claims
17 during the prosecution of this Action. See Decl. Nordrehaug, ¶11. Following the
18 extensive investigation by both Parties, the Parties agreed to engage in private mediation.
19 The Parties attended an all-day mediation on May 12, 2021 before Louis Marlin, a
20 respected and experienced mediator. At all times, the Parties' settlement negotiations
21 have been non-collusive, adversarial, and at arm's length. The Parties agreed on the
22 basic terms of a class and PAGA settlement pursuant to a Memorandum of
23 Understanding executed following the mediation, ongoing post-mediation discussions
24 and a mediator's proposal. The Parties then negotiated the final Agreement now
25 submitted for this Court's consideration. Decl. Nordrehaug, ¶12.

26 **IV. THE SETTLEMENT TERMS AND PLAN OF ALLOCATION**

27 **A. The Gross Settlement Amount**

28 To implement the terms of this Settlement, Defendant agrees to pay the Gross

1 Settlement Amount of One Million Five Hundred Thousand Dollars (\$1,500,000) in full
2 and complete satisfaction of the Class Members' Released Class Claims. (Agreement
3 at ¶ III(B).) The Gross Settlement Amount consists of all payments to Class Members
4 from the Net Settlement Amount, and includes (a) the costs of administration of the
5 settlement, (b) all attorneys' fees and costs, (c) service awards to the Plaintiffs, and (d)
6 the PAGA Payment to the LWDA and the Aggrieved Employees. (Agreement at ¶
7 III(C)-(D).) The amount remaining in the Gross Settlement Amount after the deduction
8 of Court-approved amounts for Class Counsel Fees Payment, Class Counsel Litigation
9 Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and
10 the Settlement Administration Expenses (called the "Net Settlement Amount") shall be
11 allocated to Class Members as their Settlement Shares. (Agreement at ¶¶ I(U) and
12 III(D).) Decl. Nordrehaug, ¶13.

13 **B. Settlement Shares**

14 From the Net Settlement Amount, the Settlement Share for each Participating
15 Class Member will be calculated by (a) dividing the Net Settlement Amount by the total
16 number of weeks included in the Class Data to determine a dollar amount per week
17 ("Weekly Rate"); and (iii) then multiplying the number of weeks worked by each
18 Participating Class Member by the Weekly Rate to calculate their Settlement Share.
19 (Agreement at ¶ III(D)(2).) Decl. Nordrehaug, ¶14.

20 Within twenty-one (21) days of the Effective Date (as defined in the Agreement
21 at I(O)), Defendant shall transfer the Gross Settlement Amount to the Settlement
22 Administrator. (Agreement at ¶ III(F)(10).) Thereafter, the distribution of Settlement
23 Shares to Participating Class Members shall be made by the Settlement Administrator
24 within fifteen (15) days after Defendant funds the Gross Settlement Amount.
25 (Agreement at ¶ III(F)(10).) Checks issued shall remain valid and negotiable for one
26 hundred eighty (180) days, and any unclaimed funds will be paid to the California
27 Controller's Unclaimed Property Fund in the name of and for the benefit of the individual
28 who did not cash their check. (Agreement at ¶ III(F)(11).) Decl. Nordrehaug, ¶15.

1 **C. Scope of the Release of Class Claims**

2 The scope of the release by all Class Members who do not opt out tracks the scope
3 of the allegations in the Action. Upon the Effective Date, all Participating Class
4 Members shall irrevocably release the following claims against Defendant and the
5 Released Parties:

6 all applicable California wage and hour claims, rights, demands, liabilities
7 and causes of action, whether known or unknown, arising from the claims
8 alleged in the operative complaint in the Action, or that could have been
9 alleged based upon the facts alleged in the operative complaint in the
10 Action against Defendants, which arose during the Class Period, including
11 claims for: violations of California Labor Code §§ 226.7, 510 et seq., 512,
12 558, 1194, 1197, 1197.1, 1198, or 2802; failure to pay all wages in a timely
13 manner in violation of California Labor Code §§ 200, 201, 202, 203, 204,
14 210, 233, 246, 248, and 248.5; failure to provide accurate wage statements
15 in violation of California Labor Code § 226; unfair competition; failure to
16 provide sick pay; violations of the California Labor Code Private Attorney
General Act, Labor Code § 2698 et seq.; civil penalties pursuant to Labor
Code § 2699 et seq.; claims under California Business & Professions Code
§§ 17000 and 17200, et seq.; claims under California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-(B); and any damages, penalties,
restitution, disgorgement, interest or attorneys' fees as a result thereof, and
expressly excluding all other claims, including claims for vested benefits,
wrongful termination, unemployment insurance, disability, social security,
workers' compensation, and class claims outside of the Class Period and
PAGA claims outside of the PAGA period ("Released Class Claims").

(Agreement at ¶ III(G)(1).) Decl. Nordrehaug, ¶16.

17 **D. PAGA**

18 Subject to Court approval, \$30,000 of Gross Settlement Amount will be allocated
19 to PAGA, of which 75% (\$22,500) shall be allocated to the Labor Workforce
20 Development Agency ("LWDA") as its share of the civil penalties and 25% (\$7,500) will
21 be distributed to the Aggrieved Employees based on the number of their respective pay
22 periods worked during the PAGA Period. (Agreement at III(C)(3).) Decl. Nordrehaug,
23 ¶ 17.

24 **E. Scope of the Release of the PAGA Claims**

25 The scope of the release by all Aggrieved Employees tracks the scope of the
26 allegations in the Action. Upon the Effective Date, Defendants shall be entitled to a
27 release from the State of California of the Released PAGA Claims defined as follows:
28

1 all PAGA claims pled in the operative complaint or that could have been
2 pled based on the factual allegations contained in the operative complaint
3 or any amendments thereto in the Action and PAGA letters sent by
4 Plaintiffs that occurred during the PAGA Period as to the Aggrieved
5 Employees which includes PAGA claims for violation of violation of
6 California Labor Code §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7,
7 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
8 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
9 applicable Wage Order(s), and expressly excluding all other claims,
10 including claims for vested benefits, wrongful termination, unemployment
11 insurance, disability, social security, workers' compensation, and PAGA
12 claims outside of the PAGA Period ("Released PAGA Claims").

13 (Agreement at ¶ III(G)(2).) Decl. Nordrehaug, ¶ 18.

14 **F. Settlement Administration**

15 Subject to Court approval, the Parties have agreed on ILYM Group to administer
16 the settlement in this action ("Settlement Administrator"). (Agreement at ¶ III(E).) The
17 Settlement Administrator will be paid for administration in an amount not to exceed
18 \$20,000. (Agreement at ¶ III(C)(4).) The proposed Settlement Administrator, ILYM
19 Group, has extensive experience in the settlement administration of wage-hour class
20 actions like this one, having administered many class action settlements. Decl.
21 Nordrehaug, ¶19.

22 **E. Payments to the Plaintiffs and Class Counsel**

23 Class Counsel will apply to the Court for an award of reasonable attorneys' fees
24 in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for
25 reimbursement of reasonable expenses in an amount not to exceed \$40,000, subject to
26 Court approval. (Agreement at ¶ III(C)(2). Plaintiffs will also apply for Court approval
27 of service awards in an amount not to exceed \$10,000 each. (Agreement at ¶ III(C)(1).)
28 Finally, pursuant to the Addendum, the pending union grievances with overlapping wage
and hour issues are being resolved in exchange for \$1,000 each to Aldana and Gutierrez.
Decl. Nordrehaug, ¶20.

29 **V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR PRELIMINARY APPROVAL**

30 When a proposed class-wide settlement is reached, the settlement must be

1 submitted to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A.
2 Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87. The Ninth Circuit
3 has declared that a strong judicial policy favors settlement of class actions. *Class*
4 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

5 Preliminary approval is the first of three steps that comprise the approval
6 procedure for settlements of class actions. See e.g. *Louie v. Kaiser Found. Health Plan,*
7 *Inc.*, 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008). The second step is the
8 dissemination of notice of the settlement to all class members. The third step is a final
9 settlement approval hearing to determine the fairness, adequacy, and reasonableness of
10 the settlement and when class members may be heard regarding the settlement. See
11 *Manual for Complex Litigation*, Second §30.44 (1993).

12 The question presented on a motion for preliminary approval of a proposed class
13 action settlement is whether the proposed settlement is "within the range of possible
14 approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*,
15 690 F.2d 616, 621 n.3 (7th Cir. 1982); *Louie, supra*, at *7. Preliminary approval is
16 merely the prerequisite to giving notice so that "the proposed settlement . . . may be
17 submitted to members of the prospective Class for their acceptance or rejection." *Phila.*
18 *Housing Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D.
19 Pa. 1970). There is an initial presumption of fairness when a proposed settlement, which
20 was negotiated at arm's length by Class Counsel, is presented for court approval.
21 *Newberg*, 3d Ed., §11.41, p.11-88. The ultimate question of whether the proposed
22 settlement is fair, reasonable and adequate is made after notice of the settlement is given
23 to the class members and a final settlement hearing is held by the Court.

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

26 "The parties must provide the court with information sufficient to enable it to
27 determine whether to give notice of the propos[ed] [settlement] to the class." Fed. R.
28 Civ. P., rule 23(e)(1)(A). The approval of a proposed settlement of a class action suit is

1 a matter within the broad discretion of the trial court. *Stanton v. Boeing*, 327 F.3d 938,
2 959 (9th Cir. 2003). Preliminary approval does not require the trial court to answer the
3 ultimate question of whether a proposed settlement is “fair, reasonable and adequate.”
4 *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Manual for Complex*
5 *Litigation*, Third, §§ 20.212. At final approval of a settlement, a court is to balance
6 several factors, including: “[i] the strength of the plaintiffs’ case; [ii] the risk, expense,
7 complexity, and likely duration of further litigation [and] the risk of maintaining class
8 action status throughout the trial; [iii] the amount offered in settlement; [iv] the extent
9 of discovery completed and the stage of the proceedings; [and] [v] the experience and
10 views of counsel” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

11 In considering a potential settlement for preliminary approval purposes, the trial
12 court does not have to reach any ultimate conclusions on the issues of fact and law which
13 underlie the merits of the dispute, and need not engage in a trial on the merits. *Officers*
14 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir. 1982), cert. denied, 459 U.S.
15 1217 (1983). The question of whether a proposed settlement is fair, reasonable and
16 adequate necessarily requires a judgment and evaluation by the attorneys for the parties
17 based upon a comparison of “the terms of the compromise with the likely rewards of
18 litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464
19 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer*
20 *Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Therefore, many courts
21 recognize that the opinion of experienced counsel supporting the settlement is entitled
22 to considerable weight. *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
23 *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983); *Weinberger*, 698 F.2d
24 at 74; *Armstrong v. Board of School Directors*, 616 F.2d 305, 325 (7th Cir. 1980); *Fisher*
25 *Bros. v. Cambridge-Lee Indus., Inc.*, 630 F. Supp. 482, 489 (E.D. Pa. 1985).

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

27 A number of factors are to be considered in evaluating a settlement for purposes
28 of preliminary approval. No one factor should be determinative, but rather all factors

1 should be considered. "If the proposed settlement appears to be the product of serious,
2 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
3 grant preferential treatment to class representatives or segments of the class, and falls
4 within the range of possible approval, then the court should direct that the notice be
5 given to the class members of a formal fairness hearing." *In re Tableware Antitrust*
6 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2011). To make this determination, the
7 Court must consider the following factors:

- 8 (A) the class representative and class counsel have adequately represented
the class;
- 9 (B) the proposal was negotiated at arm's length;
- 10 (C) the relief provided for the class is adequate, taking into account:
 - 11 (i) the costs, risks, and delay of trial and appeal;
 - 12 (ii) the effectiveness of any proposed method of distributing relief to
the class, including the method of processing class-member claims;
 - 13 (iii) the terms of any proposed award of attorneys' fees, including
timing of payment; and
 - 14 (iv) any agreement required to be identified under Rule 23(e)(3); and
- 15 (D) the proposal treats class members equitably relative to each other.

16 Fed. R. Civ. P. 23(e)(2).

17 Courts also examine the *Hanlon* factors in addition to conducting a
18 range-of-reasonableness analysis at the preliminary stage, reasoning it is better to closely
19 scrutinize the settlement terms at the earliest opportunity so that if a fatal flaw exists, it
20 can be addressed before the parties "waste a great deal of time and money in the notice
21 and opt-out process." *Millan v. Cascade Water Services, Inc.*, 310 F.R.D. 593 (E.D. Cal.
22 2015). Here, the settlement satisfies all of these criteria.

23 **1. The Class Representatives and Class Counsel Have Adequately** 24 **Represented the Class**

25 The proposed Class Representative and Class Counsel have more than adequately
26 represented the Class Members and Aggrieved Employees. The Parties scheduled a
27 private mediation to take place before Luis Marlin, Esq., a respected and experienced
28 mediator for class actions and wage and hour lawsuits. (Decl. Nordrehaug, ¶ 12.) Prior
to mediation, Defendants provided to Plaintiffs and Class Counsel payroll and
employment data and other information regarding the Class Members and Aggrieved

1 Employees, various internal documents, and other compensation and employment-related
2 materials. (Decl. Nordrehaug, ¶ 10.) Class Counsel analyzed the data with the assistance
3 of damages expert Berger Consulting and prepared and submitted a mediation brief to
4 Mediator Marlin. (Decl. Nordrehaug, ¶¶ 22-24.) Class Counsel is experienced with
5 these class and PAGA claims and has settled similar claims on behalf of employees.
6 (Decl. Nordrehaug, ¶31.) Most importantly, Plaintiffs and Class Counsel believe that
7 this settlement is fair, reasonable and adequate and in the best interests of the Class
8 Members.

9 **2. The Settlement Was Reached Through Arm's Length Negotiations and**
10 **Is the Product of Serious, Informed and Noncollusive Negotiations**

11 This settlement is the result of extensive and hard fought negotiations. Defendants
12 deny each and every one of the claims and contentions alleged in this Action.
13 Defendants have asserted and continue to assert many defenses thereto, and has
14 expressly denied and continues to deny any wrongdoing or legal liability arising out of
15 the conduct alleged in the Action. Settlement negotiations took place between
16 experienced counsel. Counsel for the Parties engaged in formal mediation and
17 settlement negotiations and because the Parties were unable to reach a settlement on the
18 day of the mediation, had ongoing negotiations post-mediation. Only after extensive,
19 noncollusive negotiations, the Parties reached an agreement based on a mediator's
20 proposal, the experience of counsel, and the uncertainties of protracted litigation.
21 Importantly, Plaintiffs and Class Counsel believe that this settlement is fair, reasonable
22 and adequate. Decl. Nordrehaug, ¶21.

23 Class Counsel has conducted a thorough investigation into the facts of the Action,
24 including a review of relevant documents and data and a diligent investigation of the
25 Class Members' claims against Defendant. Class Counsel also retained an expert to
26 prepare a damage valuation for use in the mediation and negotiations. Decl. Nordrehaug,
27 ¶22.

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

1 litigate and trying this Action against Defendants through possible appeals, which could
2 take several years, and are also mindful of and recognize the inherent problems of proof
3 under, and alleged defenses to, the claims asserted in the Action. Based on the foregoing
4 documents and data, and their own independent investigation and evaluation, Class
5 Counsel is of the opinion that the settlement with Defendants for the consideration and
6 on the terms set forth in the Settlement is fair, reasonable, and adequate in light of all
7 known facts and circumstances, including the risk of significant delay, defenses asserted
8 by Defendants, and potential appellate issues. Decl. Nordrehaug, ¶ 23.

9 Here, the negotiations have been hard-fought and aggressive with capable
10 advocacy on both sides. Accordingly, "[t]here is likewise every reason to conclude that
11 settlement negotiations were vigorously conducted at arms' length and without any
12 suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*,
13 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

14 **3. The Relief Provided For The Class Is More Than Adequate in Light of**
15 **Value of the Claims, Similar Settlements, and the Risks of Continued**
Litigation

16 The proposed Settlement herein has no "obvious deficiencies" and is well within
17 the range of possible approval. All Class Members will receive an opportunity to
18 participate in and receive payment according to the same formula. The Gross Settlement
19 Amount provides an average value of \$2,329 per Class Member and \$14 per workweek,
20 and after deductions, the Net Settlement Amount provides an average recovery of \$1,378
21 per Class Member and \$8.33 per work week. Decl. Nordrehaug, ¶24.

22 In advance of negotiations, Class Counsel received class data concerning
23 employment and payroll information, which permitted Class Counsel to make an
24 intelligent evaluation. The calculations to compensate for the amount due for the Class
25 at the time of the mediation were calculated by Berger Consulting, Plaintiffs' damage
26 expert. As to the Class whose claims are at issue in this Action, Plaintiff used an expert
27 (Berger Consulting) to analyze the data and determine the potential unpaid wages for the
28 employees. The maximum potential damages were calculated to be \$187,463 for the

1 miscalculation of overtime (however these damages could be closer to \$0 because of the
2 CBA and Labor Code § 514) and \$1,640,184 for alleged work time variances between
3 scheduled time and punch data, \$3,883,250 for meal periods after accounting for meal
4 period premiums paid to the Class, \$3,892,150 for rest period damages, and \$789,702
5 for unreimbursed business expenses for personal cell phones. Decl. Nordrehaug, ¶24.
6 As a result, the total damage valuation was therefore calculated that Defendant was
7 subject to a maximum damage claim in the amount of \$10,392,749. As to potential
8 penalties, Plaintiff calculated that wage statement penalties were a maximum of
9 \$1,170,050 and potential waiting time penalties were \$1,925,339, however, these wage
10 statement and waiting time penalties claims potentially have a much smaller value, even
11 if damages were awarded, to the extent that they are derivative of the meal and rest break
12 claims.² Defendants vigorously disputed Plaintiffs' calculations and exposure theories.
13 Decl. Nordrehaug, ¶24.

14 Consequently, the Gross Settlement Amount of \$1,500,000 represents more than
15 14% of the value of the damages at issue in this case at the time this Settlement was
16 negotiated, assuming these amounts could be proven at trial. Given the amount of the
17 settlement as compared to the potential value of claims in this case and the defenses
18
19

20 ² While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code
21 Sections 203 and 226, Plaintiffs recognized that these claims were subject to various
22 defenses asserted by Defendants, including, but not limited to, a good faith dispute
23 defense as to whether any premium wages for meal or rest periods or other wages were
24 owed given Defendants' position that Plaintiffs were properly compensated. See
25 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful
26 failure to pay wages if the employer and employee have a good faith dispute as to
27 whether and when the wages were due."). Additionally, Courts have held that violations
28 of the meal and rest period regulations, which require payment of a "premium wage" for
each improper meal period, do **not** give rise to claims under sections 203 and 226. See
Ling v. P.F. Chang's China Bisto, Inc., 245 Cal. App. 4th 1242, 1261 (2016) and
Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308, 1336 (2018). As a result,
the viability of Plaintiffs' claims on these theories is uncertain.

1 asserted by Defendant, this settlement is fair and reasonable.³ Decl. Nordrehaug, ¶24.

2 Where both sides face significant uncertainty, the attendant risks favor settlement.
3 *Hanlon, supra*, 150 F.3d at 1026. "Generally, unless the settlement is clearly inadequate,
4 its acceptance and approval are preferable to lengthy and expensive litigation with
5 uncertain results." *Ching v. Siemens Indus., Inc.*, 2014 U.S. Dist. LEXIS 89002, 2014
6 WL 2926210, at *4 (N.D. Cal. 2014).

7 Here, a number of defenses asserted by Defendant presented serious threats to the
8 claims of Plaintiff and the other Class Members. Defendants contend that Defendants'
9 employment practices complied with all applicable Labor laws, including the applicable
10 Wage Order. For example, Defendants argued that employees were compensated for
11 all hours worked because Defendants' facilities automatically paid employees additional
12 donning and doffing time for every shift. Defendants further contend that federal law
13 preempts one or more of the claims of the Class Members because their right to wages
14 and meal penalties arises exclusively from and requires interpretation and analysis of a
15 collective bargaining agreement that was applicable to their employment with
16 Defendants. Defendants also argued that the company employees are not required to use
17 their personal cell phones in furtherance of their job duties, which would wipe out all
18 damages relating to unreimbursed expenses. Defendants further argued that the
19 California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004

20
21 ³ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007)
22 (approving a settlement where the settlement amount constituted approximately 25% of
23 the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*,
24 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where
25 "the proposed Total Settlement Amount represents approximately 10% of what class
26 might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego*
27 *Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class
28 settlement which represented "roughly one-sixth of the potential recovery".) See also
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 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 maximum valuation).

1 (2012), weakened Plaintiffs' claims, on liability, value, class certifiability, and
2 manageability. Finally, several Courts have held that meal and rest period violations do
3 not give rise to wage statement or waiting time penalties. See e.g. *Ling v. P.F. Chang's*
4 *China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). If successful, Defendants'
5 defenses could eliminate or substantially reduce any recovery to the Class. While
6 Plaintiffs believe that these defenses could be overcome, Defendants maintain these
7 defenses have merit and therefore present a serious risk to recovery for Plaintiff, the
8 Class Members, and the Aggrieved Employees. Decl. Nordrehaug at ¶25.

9 Moreover, there was also a significant risk that, if the Action was not settled,
10 Plaintiffs would be unable to obtain class certification and maintain a certified class
11 through trial or demonstrate that his PAGA claim is manageable, and thereby not recover
12 on behalf of any employees other than themselves. At the time of the mediation,
13 Defendants forcefully opposed the propriety of class certification, arguing that individual
14 issues precluded such findings. Further, as demonstrated by the California Supreme
15 Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
16 significant hurdles to overcome for a class-wide recovery even where the class has been
17 certified. While other cases have approved class certification in wage and hour claims,
18 class certification in this action would have been hotly disputed and was by no means a
19 foregone conclusion. Decl. Nordrehaug at ¶26.

20 Finally, the proposed method of distribution will be effective as payments will be
21 made automatically to every Participating Class Member, without the need to submit a
22 claim form. The Agreement (with its Addendum) sets forth all the terms of Settlement,
23 and there are no other agreements between the Parties that would need to be identified
24 under Rule 23(e)(3). Decl. Nordrehaug, ¶27.

25 After vigorous negotiations and recognizing the potential risks, the Parties agreed
26 to the settlement of \$1,500,000. As a federal district court held in *Glass*, where the
27 parties faced uncertainties similar to those here:

28 In light of the above-referenced uncertainty in the law, the risk, expense,

1 complexity, and likely duration of further litigation likewise favors the
2 settlement. Regardless of how this Court might have ruled on the merits of
3 the legal issues, the losing party likely would have appealed, and the parties
4 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." See *In re Mego Financial
Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

5 *Glass, supra*, 2007 U.S. Dist. LEXIS 8476, at *11-12.

6 Here, the risk of further litigation is substantial.

7 **4. The Settlement Does Not Improperly Grant Preferential Treatment To**
8 **The Class Representative or Segments of The Class**

9 The relief provided in the settlement will benefit all Class Members equally. The
10 settlement does not improperly grant preferential treatment to the Class Representatives
11 or any individual segments of the Class. Each Class Member will be entitled to cash
12 payment based on the plan of allocation. The Settlement Share for each Participating
13 Member in the California Class will be determined based upon the weeks worked by that
14 individual. Decl. Nordrehaug at ¶14. Plaintiffs will apply to the Court for service awards
15 consistent with applicable law in consideration for their service and for the risks
16 undertaken on behalf of the Class Members. Plaintiffs performed their duties admirably
17 by working with Class Counsel during the litigation and mediation. See Decl.
18 Nordrehaug at ¶30. At this stage, the requested Plaintiffs' service award is well within
19 the accepted range of awards for purposes of preliminary approval.⁴ The Declaration of
20 Nordrehaug at ¶34 provides a long list of courts across California and the Ninth Circuit

21 ⁴See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
22 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
23 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
24 (approving \$10,000 service award where class member recovery was \$375); *Louie v.*
25 *Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding
26 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
27 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award
28 in overtime class action and a pool of \$100,000 in enhancements). The payment of
service award to the named plaintiffs in a wage and hour class action is approved by
settled authority in the Ninth Circuit, and the requested amount of \$10,000 is reasonable
in light of the amount approved in the other decisions.

1 which have awarded service awards in the amount of \$10,000 or higher, thus establishing
2 that the requested service award in this matter is “within the range of reasonableness”,
3 subject to a final determination by this Court at final approval.

4 Finally, there is no indication of any collusion or preferential treatment. The Ninth
5 Circuit in *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (2011)
6 identified three “subtle signs that class counsel have allowed pursuit of their own
7 self-interests ... to infect the negotiations:” “(1) when counsel receive a disproportionate
8 distribution of the settlement; (2) when the parties negotiate a 'clear sailing' arrangement
9 (i.e., an arrangement where defendant will not object to a certain fee request by class
10 counsel); and (3) when the parties create a reverter that returns unclaimed fees to the
11 defendant.” *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (quoting *Bluetooth*,
12 654 F.3d at 947). Here, the facts do not establish any collusion. Class Counsel’s
13 requested fee award will be supported by significant lodestar incurred and is in line with
14 awards in other employment cases. See e.g. *Laffitte v. Robert Half International, Inc.*,
15 1 Cal. 5th 480 (2016); *Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149,
16 *17 (N.D. Cal. 2009) (““nearly all common fund awards range around 30%””) (quoting
17 *In re Activision Sec. Litigation*, 723 F.Supp. 1373 (N.D. Cal. 1989)); *Ingalls v. Hallmark*
18 *Mktg. Corp.*, 2009 U.S. Dist. LEXIS 131078 (C.D. Cal.2009) (awarding 33.33% fee on
19 a \$5.6 million wage and hour class action); *Birch v. Office Depot, Inc.*, 2007 U.S. Dist.
20 LEXIS 102747 (S.D. Cal. 2007) (awarding a 40% fee on a \$16 million wage and hour
21 class action); *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal.
22 2006) (awarding a 40% fee on a \$3.75 million wage and hour class action); *Stuart v.*
23 *Radioshack Corp.*, 2010 U.S. Dist. LEXIS 92067, *15-18 (N.D. Cal. 2010) (awarding
24 attorneys’ fees amounting to one-third of a \$4.5 million class settlement). Importantly,
25 the Settlement is entirely non-reversionary. The absence of any sign of collusion and the
26 arm’s length negotiations before an experienced mediator all support the approval of the
27 Settlement.
28

1 **5. The *Hanlon* Factors Also Support the Settlement**

2 a. The Strength of Plaintiffs' Case

3 The Court should “evaluate objectively the strengths and weaknesses inherent in
4 the litigation and the impact of those considerations on the parties' decisions to reach
5 these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 975 (E.D. Cal.
6 2012) (citation omitted). In so doing, however, the Court does “not reach 'any
7 conclusions regarding the contested issues of fact and law that underlie the merits of
8 th[e] litigation.’” *Brewer v. Salyer*, 2017 U.S. Dist. LEXIS 101374, 2017 WL 2813178,
9 at *3 (E.D. Cal. 2017).

10 Here, Defendants deny all allegations of wrongdoing and allege numerous
11 affirmative defenses relating not only to Plaintiffs' claims, but also to class certification.
12 Defendants assert facts that could negate essential elements of Plaintiffs' claims.
13 Defendants contend, for example, that its employees were able to take meal and rest
14 breaks, that employees were paid for all hours worked, and that employees were not
15 required to use their personal cell phones in furtherance of their job duties. In addition,
16 Defendant contends that federal law preempts the claims because of the collective
17 bargaining agreement. Further, there could be significant problems of proof regarding
18 the extent to which Class Members allegedly missed meal and rest breaks during the
19 Class Period. Decl. Nordrehaug at ¶25. Plaintiffs' willingness to settle this action at a
20 discount to the maximum estimated recovery is not suspect or improvident in light of
21 such considerations. This factor weighs in favor of approval.

22 b. The Risk, Expense, Complexity and Likely Duration of Further
23 Litigation

24 Approval of settlement is "preferable to lengthy and expensive litigation with
25 uncertain results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529
26 (C.D. Cal. 2004). Moreover, “[e]mployment law class actions are, by their nature,
27 time-consuming and expensive to litigate.” *Aguilar v. Wawona Frozen Foods*, 2017 U.S.
28 Dist. LEXIS 76751, 2017 WL 2214936, at *3 (E.D. Cal 2017).

1 As discussed above, this Action involves multiple claims under state and federal
2 law, implicating several aspects of Defendants' operations, including Defendants'
3 payment of wages and the management of meal and rest breaks. Even assuming
4 Plaintiffs could show that Defendants had unlawful policies and practices, Plaintiff
5 would still have to set forth evidence to establish the extent to which a given employee
6 missed breaks and was not paid wages. In addition to increasing the complexity, expense
7 and duration of this litigation, the accumulation of individualized issues would raise a
8 risk of decertification in these proceedings. This factor weighs in favor of approval.

9 c. The Amount Offered in Settlement

10 The amount offered in settlement is generally considered to be one of the most
11 important consideration of any class settlement. See *Kutzman v. Derrel's Mini Storage,*
12 *Inc.*, 2020 U.S. Dist. LEXIS 13314 (E.D. Cal. 2020). "Courts regularly approve class
13 settlements where class members recover less than one quarter of the maximum potential
14 recovery amount." *Kutzman, supra*, 2020 U.S. Dist. LEXIS 13314, at *30.

15 As discussed above the settlement of \$1,500,000.00 represents more than 14% of
16 the value of the maximum damages at issue in this case at the time this Settlement was
17 negotiated, assuming these amounts could be proven at trial. This factor weighs heavily
18 in favor of approval. Decl. Nordrehaug, ¶24.

19 d. The Extent of Discovery Completed

20 Class Counsel has conducted a thorough investigation into the facts of the class
21 action. Plaintiffs obtained a production of documents from the Defendants. In advance
22 of mediation, Defendants also provided information necessary for Class Counsel to
23 intelligently negotiate a settlement. Decl. Nordrehaug at ¶28. Class Counsel engaged in
24 a thorough review and analysis of the relevant documents and data with the assistance
25 of an expert, Berger Consulting. Accordingly, the agreement to settle did not occur until
26 Class Counsel possessed sufficient information to make an informed judgment regarding
27 the likelihood of success on the merits and the results that could be obtained through
28 further litigation. Decl. Nordrehaug at ¶28.

1 Plaintiffs engaged in a full investigation of the claims with the necessary data and
2 documentation. The Parties then engaged in an all-day mediation, conducted by a
3 mediator with experience in employment class actions, engaged in additional settlement
4 negotiations post-mediation, and agreed to settle this Action pursuant to the terms and
5 conditions of a proposal provided by the mediator. Based on the foregoing information
6 and data and their own independent investigation and evaluation, Class Counsel is of the
7 opinion that the settlement with Defendant for the consideration and on the terms set
8 forth in the Agreement is fair, reasonable, and adequate, and is in the best interest of the
9 Class Members in light of all known facts and circumstances, including the risk of
10 significant delay, defenses asserted by Defendants, and numerous potential appellate
11 issues. There can be no doubt that Counsel for the Parties possessed sufficient
12 information to make an informed judgment regarding the likelihood of success on the
13 merits and the results that could be obtained through further litigation. Decl. Nordrehaug
14 at ¶29.

15 In *Glass*, the Northern District of California recently granted final approval of an
16 overtime and meal wage action even though no formal discovery had been conducted
17 prior to the settlement:

18 Here, no formal discovery took place prior to settlement. As the Ninth
19 Circuit has observed, however, "[i]n the context of class action settlements,
20 'formal discovery is not a necessary ticket to the bargaining table' where the
21 parties have sufficient information to make an informed decision about
22 settlement." See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d
23 at 459.

24 2007 U.S. Dist. LEXIS 8476 at *14.

25 Unlike *Glass*, here the Parties did engage in formal disclosures and document
26 production, as well as conduct independent investigations, interviews and due diligence
27 to confirm the accuracy of the information supplied by Defendants. Accordingly, Class
28 Counsel was in a better position than in *Glass* to evaluate the fairness of this Settlement.

29 VI. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT 30 PURPOSES

31 The proposed settlement meets all of the requirements for certifying a settlement

1 class under Fed. R. Civ. Proc. 23(b)(2), and therefore, the Court may appropriately
2 approve the Class as defined in the Agreement. For purposes of settlement only, this
3 Court should conditionally certify the Class defined as "all individuals who are or
4 previously were employed by Defendants in California who were classified as
5 non-exempt employees at any time during the Class Period." (Agreement at ¶ I(C).)

6 **A. Rule 23 Of The Federal Rules Of Civil Procedure**

7 Plaintiffs seek certification of this action for settlement purposes under Federal
8 Rules of Civil Procedure 23(b)(3). This portion of Rule 23 applies to class actions where
9 "the court finds that the questions of law or fact common to the members of the class
10 predominate over any questions affecting only individual members, and that a class
11 action is superior to other available methods for the fair and efficient adjudication of the
12 controversy." Fed. R. Civ. Proc. 23(b)(3).

13 To maintain a class action under Rule 23(b)(3), the four prerequisites of Federal
14 Rules of Civil Procedure 23(a) must first be satisfied. These prerequisites are referred
15 to as numerosity, commonality, typicality, and adequacy of representation, and are set
16 forth in Rule 23(a) as follows:

- 17 (1) the class is so numerous that joinder of all members is impracticable,
18 (2) there are questions of law or fact common to the class,
19 (3) the claims or defenses of the representative parties are typical of the
20 claims or defenses of the class, and
21 (4) the representative parties will fairly and adequately protect the
22 interests of the class.

23 The Parties agree that, for purposes of settlement only, these requirements may be
24 satisfied in this case, and therefore, the proposed Class should be certified for purposes
25 of settlement only.

26 **B. The Numerosity Requirement Is Satisfied**

27 Rule 23(a) merely requires that the class be "so numerous that joinder of all
28 members is impracticable." Fed. R. Civ. Proc. 23(a). "Courts have routinely found the
numerosity requirement satisfied when the class comprises 40 or more members."
EEOC v. Kovacevich "5" Farms, 2007 U.S. Dist. LEXIS 32330 at *57 (E.D. Cal. 2007);

1 see also *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *Ansari v. New*
2 *York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998). Here, the Class is composed of
3 approximately 644 individuals in the Class, which Plaintiffs contend is sufficiently
4 numerous for settlement purposes. See Declaration of Rick Bergstrom at ¶3, which is
5 attached as Exhibit #2 to the Decl. Nordrehaug.

6 **C. Common Questions Of Law And Fact Bind The Class**

7 Rule 23(a) requires that there be a common question of law or fact. Rule 23(a) is
8 satisfied where "the course or conduct giving rise to the cause of action affects all class
9 members, and at least one of the elements of that cause of action is shared by all of the
10 class members." *Lockwood Motors, Inc. v. General Motors Corp.*, 162 F.R.D. 569, 575
11 (D. Minn. 1995). This requirement is met if common questions of liability are present,
12 even if there may be individual variations. *Hanlon, supra*, 150 F.3d at 1019; *Kurihara*
13 *v. Best Buy Co.*, 2007 U.S. Dist. LEXIS 64224, *17 (N.D. Cal. 2007).

14 Here, Plaintiffs contends that common questions of law and fact are present,
15 specifically the common questions of whether Defendants' employment practices were
16 lawful, whether Defendants failed to properly provide and/or pay for meal and rest
17 periods, whether the wage claims and meal period claims are preempted by federal law
18 because of the applicable collective bargaining agreement, whether Defendants' conduct
19 was willful, and whether the Class is entitled to compensation and related penalties.
20 Plaintiffs contend that certification of this Class is appropriate because Defendants
21 allegedly engaged in uniform practices with respect to the Class Members. As a result,
22 these common questions of liability could be answered on a class wide basis. Decl.
23 Nordrehaug at ¶30. While Defendants dispute that the commonality requirement may
24 be satisfied for purposes of litigation, Defendants do not oppose such a finding for
25 purposes of this Settlement only.

26 **D. The Plaintiffs' Claims Are Typical Of The Class Claims**

27 The typicality requirement of Rule 23(a) requires that the members of the class
28 have the same or similar claims as the named plaintiff. "The typicality requirement is

1 met when the claims of the named plaintiff arise from the same event or are based on the
2 same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In
3 *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
4 "[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
6 substantially identical." 150 F.3d at 1020. Typicality "does not mean that the claims of
7 the class representative[s] must be identical or substantially identical to those of the
8 absent class members." *Stanton, supra*, at 957.

9 In the instant case, Plaintiffs contend that the typicality requirement is fully
10 satisfied. Plaintiffs, like every other member of the Class, was employed by Defendants
11 as non-exempt employees, and, like every other member of the Class, was subject to the
12 same employment practices concerning meal and rest periods. Plaintiffs, like every other
13 member of the Class, also claims owed compensation as a result of the Defendants'
14 uniform policies and practices. Thus, the claims of Plaintiffs and the members of the
15 Class arise from the same course of conduct by Defendants, involve the same issues, and
16 are based on the same legal theories. Decl. Nordrehaug at ¶ 30. The typicality
17 requirement of Rule 23 is met as to the common issues presented. While Defendants
18 dispute the typicality requirement may be satisfied for purposes of litigation, Defendants
19 do not oppose a finding of typicality for purposes of this Settlement only.

20
21 **E. The Class Representatives Have Fairly And Adequately Protected
The Interests Of The Class**

22 Plaintiffs contend that Plaintiffs provided adequate representation of the interests
23 of the Class in that: (a) their attorneys are competent and experienced in class litigation
24 and generally able to conduct the proposed litigation; and (b) the Plaintiffs do not have
25 interests antagonistic to those of the class. *White v. Local 942*, 688 F.2d 85 (9th Cir.
26 1982). Simply put, Rule 23 asks whether Plaintiffs, as the Class Representative, will
27 vigorously prosecute the action on behalf of the class and have a basic understanding of
28 the claims. This requirement has been met here. First, Plaintiffs are well aware of their

1 duties as the representatives of the Class and have actively participated in the prosecution
2 of this case to date. Plaintiffs effectively communicated with Class Counsel, provided
3 documents and information to Class Counsel, and participated in the investigation and
4 resolution of the Action. The personal involvement of the Plaintiffs was essential to the
5 prosecution of the Action and the monetary settlement reached. Decl. Nordrehaug at
6 ¶30. Second, Plaintiffs retained competent counsel with extensive experience in class
7 actions. See Decl. Nordrehaug at ¶31 and Exhibit #3. Third, there is no antagonism
8 between the interests of Plaintiffs and those of the Class. Both Plaintiffs and the Class
9 Members seek monetary relief under the same set of facts and legal theories. Under such
10 circumstances, there can be no conflicts of interest, and adequacy of representation is
11 satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020).
12 While Defendants disputes that the adequacy requirement may be satisfied for purposes
13 of litigation, Defendants do not oppose such finding for this Settlement only.

14 **F. The Additional Requirements Of Rule 23 Are Satisfied**

15 Since the requirements of Rule 23(a) have been satisfied, the Court now looks to
16 Rule 23(b)(3) in order to determine whether a class should be maintained under one of
17 the listed categories. Under Rule 23(b)(3), a class action may be maintained if two basic
18 conditions are met. First, common questions must predominate over individual issues,
19 and second, the class action must be superior to available other methods for the fair and
20 efficient adjudication of the controversy.

21 **1. The Predominance Requirement Is Met**

22 Rule 23(b)(3) provides that a class may be maintained if "the court finds that the
23 questions of law and fact common to the members of the class predominate over any
24 questions affecting only individual members." A company-wide policy or practice can
25 establish predominance. *Kurihara*, 2007 U.S. Dist. LEXIS 64224, at *27. Where there
26 exist "broad employer policies [which] can impact many workers at once ... a need for
27 class treatment" is often present. *Sepulveda v. Wal-Mart Stores, Inc.*, 237 F.R.D. 229,
28 247 (C.D. Cal. 2006).

1 Here, Plaintiffs contend that the adjudication of the common issues surrounding
2 Defendants' uniform and systematic employment policies applicable to non-exempt
3 employees working establish Defendants' liability on a class-wide basis. Plaintiffs
4 contend that Defendant engaged in a uniform course of failing to properly pay for wages,
5 provide meal/rest periods, and reimburse for personal cell phone usage, which resulted
6 in a systematic failure to provide compensation as required by law and that Defendants'
7 policies with respect to these issues are uniform. The only question is whether
8 Defendants' conduct supports a meritorious claim for liability. Accordingly, Plaintiffs
9 maintain that the common issues of law and fact present in this case predominate. Decl.
10 Nordrehaug at ¶ 30. While Defendants dispute that the predominance requirement may
11 be satisfied for purposes of litigation, Defendants do not oppose such a finding for
12 purposes of this Settlement only.

13 2. The Superiority Requirement Is Met

14 To certify a class, the Court must also determine "that a class action is superior to
15 other available methods for the fair and efficient adjudication of the controversy." Fed.
16 R. Civ. Proc. 23(b)(3). "Where classwide litigation of common issues will reduce
17 litigation costs and promote greater efficiency, a class action may be superior to other
18 methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
19 1996). Here, a class action is the superior mechanism for the settlement of the claims as
20 pled by Plaintiffs. While Defendants dispute that the superiority requirement may be
21 satisfied, Defendants do not oppose such a finding for purposes of this Settlement only.

22 VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

23 The Parties have agreed upon procedures by which the Class will be provided with
24 written notice of the Settlement similar to that approved and utilized in hundreds of class
25 action settlements and, for purposes of settlement only, in compliance with Federal Rule
26 of Civil Procedure 23. The Class Notice includes information regarding the nature of the
27 Action; a summary of the substance of the Settlement, including Defendants' denial of
28 liability; the definition of the Class; the procedure and time period for objecting to the

1 Settlement, exclusion from the Settlement and participating in the Settlement; a
2 statement that the District Court has preliminarily approved the Settlement; and
3 information regarding the calculation of Settlement Shares. The Parties have jointly
4 drafted a Class Notice, attached to the Agreement as Exhibit A and is hereby submitted
5 for approval.

6 The Class Notice further explains the options for Class Members as to
7 participation, opt outs and objections. Decl. Nordrehaug at ¶32. The Class Notice also
8 informs Class Members about the release applicable to them. This notice program was
9 designed to meaningfully reach the largest possible number of potential Class Members,
10 satisfies the requirements of due process, and is the best notice practicable under the
11 circumstances and constitutes due and sufficient notice to all persons entitled thereto.
12 Decl. Nordrehaug at ¶33. This notice satisfies the content requirements for notice
13 following the exemplar class notice in the *Manual for Complex Litigation*, Second
14 §41.43. This notice also fulfills the requirement that class notices be neutral. *Newberg*,
15 at §8.39.

16 **VIII. CONCLUSION**

17 The Parties have committed substantial amounts of time, energy, and resources
18 litigating and ultimately settling this case. In the judgment of Plaintiffs and Class
19 Counsel, the proposed settlement is a fair and reasonable compromise of the issues in
20 dispute in light of the strengths and weaknesses of each party's case and the uncertainty
21 of trial and appeal. Accordingly, Plaintiffs respectfully request that the Court
22 preliminarily approve the proposed settlement, enter the proposed Preliminary Approval
23 Order submitted herewith, and schedule a Final Approval Hearing that is at least 120
24 days from the date of the Preliminary Approval Order.

25 Dated: December 14, 2021

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

26 By: /s/ Kyle Nordrehaug
27 Kyle R. Nordrehaug
28 Attorneys for Plaintiffs