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

DAMMION MYLES, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BUILDERS CONCRETE, INC., a
California Corporation; CONCRETE
HOLDING COMPANY OF CALIFORNIA,
INC., a Corporation; VIKING READY
MIX CO., INC., a Corporation;
NATIONAL READY MIXED
CONCRETE CO., a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-20-102375

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

Hearing Date: July 10, 2023
Hearing Time: 8:30 a.m.

Judge: Hon. Bernard Barmann, Jr.
Courtroom: Div. H

Action Filed: October 9, 2020
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Dammion Myles (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 Builders Concrete, Inc. and Viking Ready Mix Co., Inc. (“Defendants”), and seeks entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for
6 settlement purposes only, conditionally certifying the Class, which consists of both the California Class
7 (“all individuals who were employed by Defendants in California and classified as a non-exempt
8 employee at any time during the California Class Period [April 1, 2018 through March 14, 2023]”) and
9 the FCRA Class (“all individuals who applied for employment or were employed by Defendants in the
10 United States for whom background checks were run during the FCRA Class Period [October 9, 2015
11 through March 14, 2023]”; (3) provisionally appointing Plaintiff as the representative of the Class; (4)
12 provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J.
13 De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De Blouw LLP
14 as Class Counsel for the Class; (5) approving the form and method for providing class-wide notice;
15 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group
16 as the Administrator; and (8) scheduling a final approval hearing date proposed for October 23, 2023
17 to consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and
18 Plaintiff’s motion for approval of attorneys’ fees and expenses. Plaintiff and Defendants (collectively
19 the “Parties”) have reached a full and final settlement of the above-captioned action, which is set forth
20 in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court.¹
21 A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug
22 (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement is the Los Angeles
23 Superior Court model form for class and PAGA settlements.

24 As consideration for this Settlement, the Gross Settlement Amount is Nine Hundred
25 Seventy-Five Thousand Dollars (\$975,000) to be paid by Defendants, as set forth in the Agreement.
26 The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will
27 _____

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

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

8 The following is a table of the key financial terms of the Settlement and the proposed
9 deductions:

10 **\$975,000** (Gross Settlement Amount)

- 11 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 12 - \$33,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$325,000 (Class Counsel Fees Payment - not to exceed amount)
- 14 - \$25,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$13,000 (Administration Expenses Payment - not to exceed amount)

16 **\$569,000**(Net Settlement Amount)

- 17 - \$25,000 FCRA allocation to 188 FCRA Class Members

18 \$544,000 (Allocation to California Class)

19 Based upon 320 Class Members who collectively worked 42,675 Workweeks, the Gross Settlement
20 Amount provides a value of \$3,046 per Class Member and \$22.84 per Workweek and the Net
21 Settlement Amount provides an average recovery of \$1,700 per Class Member and a recovery of \$12.74
22 per Workweek. Decl. Nordrehaug at ¶6.

23 On December 7, 2022, the Parties participated in an all-day mediation presided over by Louis
24 Marlin, a respected and experienced mediator of wage and hour representative and class actions.
25 Following this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at
26 ¶5. This Settlement is fair, reasonable and adequate, and should be preliminarily approved because
27 there is a substantial monetary payment, and there are substantial litigation and class-certification risks.
28 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
and enter the proposed order submitted herewith.

29 **II. DESCRIPTION OF THE SETTLEMENT**

30 The Gross Settlement Amount is Nine Hundred Seventy-Five Thousand Dollars (\$975,000).
31 (Agreement at ¶ 1.25.) Under the Settlement, the Gross Settlement Amount consists of the following

elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶ 1.25.) The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

Within twenty-one (21) days of the Effective Date, Defendants shall deposit the Gross Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members along with the other Court-approved distributions shall be made by the Administrator within fourteen (14) days after Defendants fully fund the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

The amount remaining in the Gross Settlement Amount after the deduction of Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.31 and 3.2.) \$25,000 will be allocated from the Net Settlement Amount to the FCRA Class so at least \$100 will be paid to each of the 188 FCRA Class Members, whose share of the \$25,000 payment shall be split equally between the Participating Class Members for the FCRA Class. The balance of the Net Settlement Amount will be allocated to the Participating Class Members for the California Class who will be paid based on the number of workweeks worked during the California Class Period. An Individual Class Payment for the California Class is calculated by (a) dividing the Net Settlement Amount (less the \$25,000 allocated to the FCRA Class) by the total number of Workweeks worked by all Participating California Class Members during the California Class Period and (b) multiplying the result by each Participating California Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendants' records; however, Class Members will have the right to challenge the number of Workweeks. Decl. Nordrehaug at ¶17.

Class Members may choose to opt-out of the Settlement by following the directions in the Class

1 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
2 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
3 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
4 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
5 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
6 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
7 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
8 Decl. Nordrehaug at ¶18.

9 A Participating Class Member must cash his or her Individual Class Payment check within 180
10 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
11 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
12 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
13 of California Code of Civil Procedure Section 384. (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

14 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
15 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
16 administration in an amount not to exceed \$13,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

17 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
18 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
19 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
20 Litigation Expenses Payment in an amount not to exceed \$33,000. (Agreement at ¶ 3.2(b).) Subject
21 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
22 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

23 Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the Gross
24 Settlement Amount for PAGA penalties under the California Private Attorneys General Act ("PAGA"),
25 Cal. Labor Code Section 2698, *et seq.* Pursuant to the express requirements of Labor Code § 2699(i),
26 the PAGA Penalties shall be allocated as follows: 75% (\$18,750) shall be allocated to the Labor
27 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$6,250)
28 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the

1 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
2 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
3 Nordrehaug at ¶22.

4 **III. CASE BACKGROUND**

5 The description of the case and claims, along with the procedural history, is set forth in the
6 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
7 exchange of documents and information in connection with the Action which permitted Class Counsel
8 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
9 in mediation on December 7, 2022 with Louis Marlin, which after arm's length negotiations, resulted
10 in this Settlement. Decl. Nordrehaug, ¶12.

11 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 12 GRANT PRELIMINARY APPROVAL**

13 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
14 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
15 California "[p]ublic policy generally favors the compromise of complex class action litigation."
16 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
17 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
18 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
19 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
20 denied, 459 U.S. 1217 (1983)).

21 Preliminary approval is the first of three steps that comprise the approval procedure for
22 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
23 members. The third step is a final settlement approval hearing, at which evidence and argument
24 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
25 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
26 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

27 The primary question presented on an application for preliminary approval of a proposed class
28 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*

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

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

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

21 In considering a potential settlement for preliminary approval purposes, the trial court does not
22 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
23 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
24 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is

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 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
2 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
3 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “‘the
4 terms of the compromise with the likely rewards of litigation.’” *Weinberger v. Kendrick*, 698 F.2d 61,
5 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
6 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
7 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
8 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

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

25 If the proposed settlement appears to be the product of serious, informed, noncollusive
26 negotiations, has no obvious deficiencies, does not improperly grant preferential
27 treatment to class representatives or segments of the class, and falls within the range of
28 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.

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

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

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

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

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

18 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
19 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
20 for the mediation, Defendants provided Class Counsel with necessary information for the members of
21 the Class, including payroll data and data concerning the composition of the Class. Plaintiff analyzed

22 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
23 Claims" means as follows: "for California Class Members, all non-FCRA claims that were alleged, or
24 reasonably could have been alleged, based on the factual allegations stated in the Operative Complaint
25 which occurred during the California Class Period; and for FCRA Class Members, all FCRA claims
26 that were alleged, or reasonably could have been alleged, based on the background check factual
27 allegations stated in the Operative Complaint which occurred during the FCRA Class Period. Except
28 as expressly set forth in this Agreement, Participating Class Members do not release any other claims,
including claims for vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers' compensation, Class Claim
claims outside of the Class Period, or FCRA Claims outside of the FCRA Class Period." (Agreement
at ¶¶ 1.42 and 6.2.)

1 the data with the assistance of damages expert, Berger Consulting, and prepared and submitted a
2 mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
3 agreed to this Settlement. The final settlement terms were negotiated and set forth in the Agreement
4 now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class
5 Counsel believe that this Settlement is fair, reasonable and adequate.

6 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants is
7 Nine Hundred Seventy-Five Thousand Dollars (\$975,000). The Settlement is all-in with no reversion
8 to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

19 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
20 this Action against Defendants and then litigating possible appeals which could take several years.
21 Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
22 complex class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent
23 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
24 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
25 is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

26 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
27 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
28 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that

1 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
2 influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

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

5 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
6 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
7 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 320 Class
8 Members who collectively worked 42,675 Workweeks, the Gross Settlement Amount provides a value
9 of \$3,046 per Class Member and \$22.84 per Workweek and the Net Settlement Amount provides an
10 average recovery of \$1,700 per Class Member and a recovery of \$12.74 per Workweek. Decl.
11 Nordrehaug, ¶6.

12 The calculations to compensate for the amount due to the Class Members at the time this
13 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
14 mediation. Class Counsel analyzed the data for putative class members and determined the potential
15 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
16 wages due to the alleged miscalculation of the regular rate was potentially \$70,789, the maximum value
17 of the claim for unpaid wages due to off the clock work was potentially \$1,209,990, the maximum
18 potential damages for unpaid meal premiums were estimated to be \$2,960,477 based upon an alleged
19 100% violation rate and after credit for meal premiums paid but excluding employees subject to a CBA
20 for whom this claim is preempted, the maximum potential rest period damages were estimated to be
21 \$4,839,960 based upon the same alleged 100% violation rate, and the maximum potential damages for
22 failure to provide expense reimbursement were calculated to be \$295,680. In total, the damages for the
23 Class were calculated to have a maximum potential total value of \$9,376,896. In addition, Plaintiff
24 calculated that the maximum value of the potential waiting time penalties were between \$451,860 and
25 \$735,964, depending on the predicate violation, and the maximum value of the potential wage statement
26 penalties were \$1,348,250.⁴ Decl. Nordrehaug, ¶6. Consequently, the Gross Settlement Amount

27 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
28 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted

1 represents more than 10% of the potential maximum damages at issue for the California Class in this
2 case, assuming these amounts could all be proven in full at trial.⁵ The above maximum calculations
3 should then be adjusted in consideration for both the risk of class certification and the risk of
4 establishing class-wide liability on all claims.

5 As to the FCRA Class, FCRA provides for statutory damages of \$100 to \$1,000 per willful
6 violation. 15 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the 188
7 individuals in the FCRA Class is between \$18,800 and \$188,800. A comparison of approved FCRA
8 settlements involving similar facts further confirms the reasonableness of this Settlement. The Court
9 in *Pietras v. Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases, which
10 settled for an average of \$34.59 per class member." Similarly, in *Bailes v. Lineage Logistics, LLC*,
11 2016 U.S. Dist. LEXIS 110943 (D. Kan 2016), the District Court approved a FCRA class settlement
12 which provided for a fund of \$149,205 for a class of 3,430, which correlates to \$43.50 per person. In
13 *Feist v. Petco Animal Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge Marilyn
14 Huff granted preliminary approval to an FCRA class settlement of \$1.2 million for a class of 37,000,
15 which equates to \$32.43 per person. Here, the Settlement allocation of at least \$100 per FCRA Class
16 Member is certainly fair and reasonable given the prior approved FCRA settlements and the defenses
17 asserted by Defendants. Given the amount of the Settlement as compared to the potential value of the
18 claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been

19 _____
20 by Defendants, including, a good faith dispute defense as to whether any wages were owed given
21 Defendants' position that Plaintiff were properly compensated and classified. *See Nordstrom*
22 *Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the
employer and employee have a good faith dispute as to whether and when the wages were due.").

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

25 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
26 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
27 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
28 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*

1 met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
5 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
6 argued that all work time was properly paid for and that there was no overtime owed. Defendants
7 contended that its meal and rest period policies fully complied with California law. Defendants also
8 argued that employees subject to a CBA could not bring many of the claims because of CBA
9 preemption under Labor Code § 514, and Defendants also asserted exemptions applicable to the
10 construction industry. As to expense reimbursement, Defendants contended that it did not fail to
11 provide reimbursement for necessary business expenses and that there were no such expenses that had
12 not already been reimbursed or that claimed expenses were incurred voluntarily and/or for the
13 convenience of employees and is therefore not required reimbursement. Defendants argued that the
14 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
15 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
16 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
17 claims. Defendants also argues that based on its facially lawful practices, they acted in good faith and
18 without willfulness, which if accepted would negate the claims for waiting time penalties and/or
19 inaccurate wage statements. As to the background check claim, Defendants argued that the forms
20 complied with FCRA in all respects. *Coleman v. Kohl's Dep't Stores, Inc.*, 2015 U.S. Dist. LEXIS
21 135746, *17 (N.D. Cal. 2015) (holding a release in a separate document does not violate FCRA); *Luna*
22 *v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055, *18-*19 & n.6 (C.D. Cal.
23 2018). Finally, the court may find remitter/reduction of the statutory damages appropriate. *See e.g.*
24 *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505,
25 at *5 (E.D.Pa. 2007). If successful, Defendants' defenses could eliminate or substantially reduce any

26
27
28 *v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 recovery to the Class. While Plaintiff believe that these defenses could be overcome, Defendants
2 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
3 Nordrehaug, ¶ 24.

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

16 After arm's length negotiations between experienced and informed counsel, the Parties
17 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
18 \$975,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

19 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
20 and likely duration of further litigation likewise favors the settlement. Regardless of how
21 this Court might have ruled on the merits of the legal issues, the losing party likely
22 would have appealed, and the parties would have faced the expense and uncertainty of
23 litigating an appeal. "The expense and possible duration of the litigation should be
24 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
23 (9th Cir. 2000)).

24 3. The Settlement Does Not Improperly Grant Preferential Treatment To 25 Class Representatives or Segments of The Class

26 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
27 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
28 Members are all determined under a neutral methodology. Each Participating Class Member will

1 receive the same opportunity to participate in and receive payment through a neutral formula that is
2 based upon the weeks worked by that individual. Decl. Nordrehaug, ¶4.

3 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
4 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
5 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. In support,
6 Plaintiff's declaration addresses his work and service on behalf of the Class. For purposes of this
7 preliminary approval stage, the requested service award of \$10,000 is well within the accepted range
8 of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
9 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
10 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
11 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser Foundation*
12 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. 2008) (awarding \$25,000 service award to each of
13 six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal.
14 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in
15 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
16 to compensate the employees for the time and effort expended on the case, for the risk of litigation, for
17 the fear of suing an employer and retaliation therefrom, and to serve as an incentive to vindicate the
18 statutory rights of all employees. 2007 WL 221862 at *16-17.

19 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 20 **Preliminary Approval Of The Settlement**

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

1 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

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

16 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
17 213 F.3d at 459).

18 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
19 Class Counsel performed formal discovery and received all necessary information which was evaluated
20 with the assistance of an expert, and also performed independent investigations and due diligence to
21 confirm the accuracy of the information supplied by Defendants.

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

23 Plaintiff contends that the proposed settlement meets all of the requirements for class
24 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
25 Court may appropriately approve the Class as defined in the Agreement. This Court should
26 conditionally certify the Class for settlement purposes only which consists of both the California Class
27 and the FCRA Class. (Agreement at ¶ 1.9.) This Court should conditionally certify the California Class
28 for settlement purposes only, defined as follows:

All individuals who were employed by Defendants in California and classified as a
non-exempt employee at any time during the California Class Period .

1 (Agreement at ¶ 1.6.)

2 The California Class Period is April 1, 2018 through March 14, 2023. (Agreement at ¶ 1.5.) This
3 Court should also conditionally certify the FCRA Class for settlement purposes only, defined as
4 follows:

5 All individuals who applied for employment or were employed by Defendants in the
6 United States for whom background checks were run during the FCRA Class Period.

7 (Agreement at ¶ 1.6.)

8 The Background Check Class Period is October 9, 2015 through March 14, 2023. (Agreement at ¶
9 1.22.)

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

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

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

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

19 While Defendants reserve all rights to dispute that the Plaintiff can satisfy these requirements,
20 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
21 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of this
22 settlement only. (Agreement at ¶ 2.20.)

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

24 Plaintiff brings this Action on behalf of a Class of individuals who worked for Defendants
25 during the applicable Class Period. Plaintiff asserts that all of these individuals are ascertainable
26 because the class members can readily be determined through examination of Defendants’ files. Given
27 that the Class consists of approximately 320 California Class Members and 188 FCRA Class Members,
28 Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574

(1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 320 current and former employees that comprise the California Class and the 188 individuals in the FCRA Class can be identified based on Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

C. Common Issues of Law and Fact Predominate

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

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

Here, Plaintiff contends that common questions of law and fact are present, and specifically the common questions of whether Defendants' compensation practices were lawful, whether the Defendants failed to provide all legally required meal and rest periods to class members, whether class members were lawfully compensated for all hours worked, whether Defendants failed to provide required expense reimbursement, whether Defendants violated the FCRA in performing background checks, and whether Class Members are entitled to damages and penalties as a result of these practices. Plaintiff contends that certification of this Class is appropriate because Defendants allegedly engaged in uniform practices with respect to the Class Members. As a result, these common questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendants dispute that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

7 In this Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
8 every other member of the California Class, was employed by Defendants as a non-exempt employee,
9 and, like every other member of the Class, were subject to the same employment practices. Plaintiff,
10 like every other member of the Class, also claim owed compensation as a result of the Defendant’s
11 uniform company policies and practices. Plaintiffs also contends that Plaintiff received the same
12 background check disclosure and as every other member of the FCRA Class. Thus, the claims of
13 Plaintiff and the members of the Class arise from the same course of conduct by Defendants, involve
14 the same issues, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of
15 settlement, Plaintiff maintains that the typicality requirement is met as to the common issues presented
16 in this case. Defendants dispute typicality but Defendants do not oppose a finding of typicality for
17 purposes of this Settlement only.

18 **E. The Class Representative Fairly and Adequately Protected the Class**

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

1 but will not oppose such a finding for purposes of this Settlement only.

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

3 To certify a class, the Court must also determine that a class action is superior to other available
4 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
5 common issues will reduce litigation costs and promote greater efficiency, a class action may be
6 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
7 1996). As courts have previously observed:

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

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

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

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

19 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
20 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
21 upon procedures by which the Class Members will be provided with written notice of the Settlement
22 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
23 Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
24 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
25 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
26 current mailing address information available. (Agreement at ¶ 8.4(b).) The Class Notice Packet will
27 include a Spanish translation. (Agreement at ¶ 1.12.)

28 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
The Class Notice will include, among other information: (i) information regarding the Action; (ii) the

1 impact on the rights of the Class Members if they do not opt out, including a description of the
2 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
3 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
4 amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiff's service award
5 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

6 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
7 the Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit an
8 objection. (Agreement at ¶¶ 1.46, 8.5, 8.7.) Class Members shall be given the opportunity to object
9 to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval
10 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
11 out will automatically receive a payment of their Individual Class Payment. This notice program was
12 designed to meaningfully reach the Class Members and it advises them of all pertinent information
13 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
14 satisfies the requirements of due process and is the best notice practicable under the circumstances and
15 complies with Rules of Court 3.766 and 3.769(f).

16 VII. CONCLUSION

17 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
18 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
19 fairness hearing for October 23, 2023, or as soon thereafter as is available for the Court.

20 Dated: May 22, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

21 By: /s/ Kyle Nordrehaug
22 Kyle R. Nordrehaug, Esq.
23 Attorney for Plaintiff
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