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

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

15 ADRIAN AGUIRRE, an individual, on  
16 behalf of himself and on behalf of all  
17 persons similarly situated,

18 Plaintiffs,

19 vs.

20 HEADLANDS VENTURES, LLC., a  
21 California Limited Liability Company; and  
22 DOES 1 through 50, Inclusive,

23 Defendants.

Case No. **34-2021-00297290-CU-OE-GDS**

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

Hearing Date: January 27, 2023

Hearing Time: 9:00 a.m.

**Reservation No. 2690820**

Judge: Hon. Jill H. Talley

Dept. 25

Action Filed: March 24, 2021

Trial Date: Not Set

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1     **I.     INTRODUCTION**

2             Plaintiff Adrian Aguirre (“Plaintiff”) respectfully submits this memorandum in support of the  
3     unopposed motion for preliminary approval of the proposed class action settlement with Defendant  
4     Headlands Ventures, LLC (“Defendant”), and seeks entry of an order: (1) preliminarily approving the  
5     proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally  
6     certifying the Class, which is comprised of “all individuals employed by Defendant in California as  
7     hourly-paid, non-exempt employees at any time during the Class Period”, which is the period of time  
8     from March 24, 2017 through Jul 31, 2022; (3) provisionally appointing Plaintiff as the representatives  
9     of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit  
10    Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)  
11    approving the form and method for providing class-wide notice; (6) directing that notice of the  
12    proposed settlement be given to the class; (7) appointing ILYM Group as Settlement Administrator,  
13    and (8) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the  
14    settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys' fees and  
15    expenses. Plaintiff and Defendant (collectively the “Parties”) have reached a full and final settlement  
16    of the above-captioned action, which is embodied in the Class Action Settlement Agreement  
17    ("Agreement") filed concurrently with the Court.<sup>1</sup> A copy of the fully executed Agreement is attached  
18    as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

19             As consideration for this Settlement, the Gross Settlement Amount is One Million Six Hundred  
20    Thousand Dollars (\$1,600,000) to be paid by Defendant, as set forth in the Agreement. The Gross  
21    Settlement Amount will settle all issues pending in the Action between the Parties and will be made  
22    in full and final settlement of the Released Class Claims. The Gross Settlement Amount includes all  
23    payments of Settlement Shares to the Participating Class Members, Settlement Administration  
24    Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class  
25    Representative Service Payment, and the PAGA Payment. The Gross Settlement Amount does not  
26    include the employer’s share of payroll taxes which will be separately paid by Defendant. The

27  
28             <sup>1</sup> Capitalized terms shall have the same meaning as defined in the Agreement.

1 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.  
2 Nordrehaug at ¶3.

3 On April 21, 2022, the Parties participated in an all-day mediation session presided over by Jeff  
4 Ross, Esq., a respected and experienced mediator of wage and hour class actions. Following this  
5 mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The  
6 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a  
7 substantial monetary payment, and there are substantial litigation and class-certification risks.  
8 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement  
9 and enter the proposed order submitted herewith.

## 10 **II. DESCRIPTION OF THE SETTLEMENT**

11 The Gross Settlement Amount is One Million Six Hundred Thousand Dollars (\$1,600,000.00).  
12 (Agreement at ¶ I(19).) Under the Settlement, the Gross Settlement Amount consists of the following  
13 elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class  
14 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class  
15 Representative Service Payment to the Plaintiff; and (5) the PAGA Payment. (Agreement at ¶ I(19).)  
16 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶  
17 III(34).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at  
18 ¶ III(34).) Decl. Nordrehaug at ¶15.

19 Defendant shall fund the Gross Settlement Amount within fifteen (15) days of the Effective  
20 Date. (Agreement at ¶ III(41).) The Settlement Shares to Participating Class Members will be mailed  
21 by the Settlement Administrator fifteen (15) days after Defendant fully funds the Gross Settlement  
22 Amount or fifteen (15) days after the Effective Date if Defendant fully prefunded the Gross Settlement  
23 Amount. (Agreement at ¶ III(41).) Decl. Nordrehaug at ¶16.

24 The Net Settlement Amount shall equal the net amount available for payment to the Class after  
25 deducting the Court-approved amounts for the Class Representative Service Payment, the Class  
26 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the  
27 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be  
28 distributed as the Settlement Shares to the Class Members who do not timely request exclusion

1 (“Participating Class Members”). (Agreement at ¶¶ I(24), III(36).) The Settlement Share will be  
2 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the  
3 total number of weeks for the Class included in the Class Data to determine a dollar amount per week  
4 ("Weekly Rate"); and (b) the Settlement Administrator shall then take the number of weeks worked by  
5 each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement  
6 Share. (Agreement at ¶ III(36)(b).) Workweeks will be based on Defendant’s records, however Class  
7 Members will have the right to challenge the number of workweeks. Decl. Nordrehaug at ¶17.

8 Class Members may choose to opt-out of the Settlement by following the directions in the Class  
9 Notice. (Agreement at ¶ III(38)(c), Ex. A.) All Class Members who do not "opt out" will be deemed  
10 Participating Class Members who will be bound by the Settlement and will be entitled to receive a  
11 Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their allocation  
12 of the PAGA Payment, and will remain subject to the release of the Released PAGA Claims, regardless  
13 of their request for exclusion. (Agreement at ¶ III(38)(c)(iii).) Finally, the Class Notice will also  
14 advise the Class Members of their right to object to the Settlement and/or dispute their workweeks.  
15 (Agreement at ¶ III(38)(c), Ex. A.) Decl. Nordrehaug at ¶18.

16 A Participating Class Member must cash his or her Settlement Share check within 180 days  
17 after it is mailed. (Agreement at ¶ III(48).) The Settlement Administrator will send a reminder to  
18 Participating Class Members who have not cashed their checks 120 days after the mailing. (Agreement  
19 at ¶ III(42).) Any settlement checks not cashed within 180 days will be voided and any funds from such  
20 uncashed checks will be paid to the California State Controller’s Unclaimed Property Fund in the name  
21 of the individual who failed to cash their check. (Agreement at ¶ III(42).) Decl. Nordrehaug at ¶19.

22 The Parties have agreed to use ILYM Group as the Settlement Administrator. (Agreement at  
23 ¶ III(37).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the  
24 expenses of administering the Settlement in an amount not to exceed \$15,000. (Agreement at ¶  
25 III(35)(d).) Decl. Nordrehaug at ¶20.

26 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not  
27 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement  
28 at ¶ III(35)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel

1 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ III(35)(b).) Subject  
2 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as  
3 the Class Representative Service Payment. (Agreement at ¶ III(35)(a).) Decl. Nordrehaug at ¶21.

4 The Parties will seek approval from the Court for the PAGA Payment of \$35,000 out of the  
5 Gross Settlement Amount, which shall be allocated 75% (\$26,250) to the LWDA as the LWDA's share  
6 of the PAGA Payment pursuant to PAGA and 25% (\$8,750) will be distributed to the Aggrieved  
7 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶  
8 III(35)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject  
9 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement  
10 at ¶ III(35)(c).) As set forth in the accompany proof of service, the LWDA has been served with this  
11 motion and the Agreement. Decl. Nordrehaug at ¶22.

### 12 **III. CASE BACKGROUND**

13 The description of the case and claims, along with the procedural history is set forth in the  
14 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the  
15 exchange of documents and information in connection with the Action which permitted Class Counsel  
16 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 9, 10 and 14. The Parties  
17 participated in mediation on April 21, 2022 with Jeff Ross, Esq., which after arm's length negotiations,  
18 resulted in this Settlement. Decl. Nordrehaug, ¶12.

### 19 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 20 GRANT PRELIMINARY APPROVAL**

21 When a proposed class-wide settlement is reached, the settlement must be submitted to the court  
22 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.  
23 California "[p]ublic policy generally favors the compromise of complex class action litigation."  
24 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*  
25 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the  
26 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,  
27 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.  
28 denied, 459 U.S. 1217 (1983)).

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

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

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

22 The approval of a proposed settlement of a class action suit is a matter within the broad  
23 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.  
24 Preliminary approval does not require the trial court to answer the ultimate question of whether a

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25  
26 <sup>2</sup> 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 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice  
2 of the settlement has been given to the class members and after they have been given an opportunity  
3 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*  
4 *Federal Practice* §§23.80 - 23.85 (2003).

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

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

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

26 A number of factors are to be considered in evaluating a settlement for purposes of preliminary  
27 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)  
28 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)

has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

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

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

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

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement.<sup>3</sup>

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

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<sup>3</sup> The release applicable to the Class is tethered to allegations in the Action and the "Released Class Claims" are "any and all class claims pled in the operative complaint or that could have been pled based upon the factual allegations contained in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period". (Agreement at ¶ III(44)(a).)

mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

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

As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is One Million Six Hundred Thousand Dollars (\$1,600,000.00). The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying these Action against Defendant through possible appeals which could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as these Action. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,

1 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best  
2 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

10 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of  
11 possible approval. All Class Members will receive an opportunity to participate in the Settlement and  
12 receive payment according to the same formula. (Agreement at ¶ III(42)(b).) For the 580 Class  
13 members who worked 40,000 work weeks, the Gross Settlement Amount provides an average value  
14 of \$2,758 per Class Member and \$40 per work week, and after deductions, the Net Settlement Amount  
15 provides an average recovery of \$1,701 per Class Member and \$24.66 per work week. Decl.  
16 Nordrehaug, ¶6.

17 The calculations to compensate for the amount due to the Class Members at the time this  
18 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of  
19 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for  
20 putative class members and determined the potential maximum damages for the class claims. For the  
21 Class, Plaintiff evaluated that the claim for unpaid overtime wages due to the alleged miscalculation  
22 of the regular rate was potentially \$49,020, the maximum potential meal period damages, based upon  
23 a maximum 58% violation rate and after deducting meal premiums paid by Defendant, were estimated  
24 to be \$1,765,433, the maximum potential rest period damages were estimated to be \$2,949,109 based  
25 upon a 100% violation rate, and the maximum potential damages for failure to provide expense  
26 reimbursement for cell-phones was calculated to be \$299,700 using \$30 per month in unreimbursed cell  
27 phone expense. In total, the damages for the Class were calculated to have a maximum potential total  
28 value of \$5,063,261. In addition, Plaintiff calculated that the maximum value of the potential waiting

1 time penalties were \$1,465,049, and the maximum value of the potential wage statement penalties were  
2 \$943,550. These wage statement and waiting time penalties claims potentially had a much smaller  
3 value or no value, even if damages were awarded, to the extent that they are only derivative of the meal  
4 and rest break claims.<sup>4</sup> Decl. Nordrehaug, ¶6.

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

11 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*  
12 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by

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13  
14 <sup>4</sup> While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and  
15 226, at mediation Plaintiff recognized that these claims were subject to various defenses asserted by  
16 Defendants, including, but not limited to, a good faith dispute defense as to whether any premium  
17 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff were  
18 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There  
19 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether  
20 and when the wages were due."). Additionally, at the time of mediation, Courts had held that violations  
21 of the meal and rest period regulations, which require payment of a "premium wage" for each improper  
meal period, do **not** give rise to claims under sections 203 and 226. *See e.g. Ling v. P.F. Chang's*  
*China Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.  
App. 5th 1308, 1336 (2018). As a result, the viability of Plaintiff's claims on these theories was  
uncertain at the time the settlement was negotiated, even though the Supreme Court subsequently ruled  
in May 2022 that meal and rest period violations could give rise to a claim under Section 203.

22 <sup>5</sup> Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the  
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.  
Nordrehaug at ¶ 33.

24 <sup>6</sup> *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)  
25 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*  
*v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \*12 (N.D. Cal. 2015) (granting final approval  
26 where "the proposed Total Settlement Amount represents approximately 10% of what class might have  
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.  
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);  
28 *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class  
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant  
2 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all  
3 work time was paid for at the proper regular rate. Defendant contend that its meal and rest period  
4 policies fully complied with California law and that Defendant's timekeeping system recorded meal  
5 periods, paid for missed meal periods, and was not required to record rest periods. Plaintiff's theory  
6 of liability for rest breaks was based upon an alleged deficient policy resulting in 100% violation rate  
7 for rest breaks, which Defendant disputed. As to expense reimbursement, Defendant contended that  
8 it paid for business expenses including personal cell phone usage. Finally, Defendant could argue that  
9 the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's  
10 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also  
11 argues that based on its facially lawful practices, it acted in good faith and without willfulness, which  
12 if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If  
13 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.  
14 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses  
15 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

28       After arm's length negotiations between experienced and informed counsel, the Parties

1 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of  
2 \$1,600,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

3 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,  
4 and likely duration of further litigation likewise favors the settlement. Regardless of  
5 how this Court might have ruled on the merits of the legal issues, the losing party likely  
6 would have appealed, and the parties would have faced the expense and uncertainty of  
7 litigating an appeal. ‘The expense and possible duration of the litigation should be  
8 considered in evaluating the reasonableness of [a] settlement.’”

9 2007 WL 221862, at \*4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458  
10 (9th Cir. 2000)).

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

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

18 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for  
19 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(35)(a).) Plaintiff  
20 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. Plaintiff  
21 will present a detailed declaration addressing their work and service at the time of final approval. For  
22 purposes of this preliminary approval stage, the requested service award of \$10,000 is well within the  
23 accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.),*  
24 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member  
25 payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D.  
26 Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*  
27 *Foundation Health Plan, Inc.*, 2008 WL 4473183, \*7 (S.D.Cal. 2008) (awarding \$25,000 service  
28 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,  
\*16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of  
\$100,000 in enhancements ). As explained in *Glass*, service awards are routinely awarded to class  
representatives to compensate the employees for the time and effort expended on the case, for the risk

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

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

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

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

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

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

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

28 Here, Class Counsel was in far better position to evaluate the fairness of this Settlement because

1 Class Counsel performed a thorough analysis and received all necessary information which was  
2 evaluated with the assistance of an expert, and also performed independent investigations and due  
3 diligence to confirm the accuracy of the information supplied by Defendant.

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

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

9 All individuals employed by Defendant in California as hourly-paid, non-exempt  
10 employees at any time during the Class Period.

11 (Agreement at ¶ I(3).)

12 The “Class Period” is from March 24, 2017 through July 31, 2022. (Agreement at ¶ I(10).)

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

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

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

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

22 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,  
23 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case  
24 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of  
25 settlement only. (Agreement at ¶ II(33).)

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

27 Plaintiff brings this Action on behalf of a Class of individuals during the applicable Class  
28 Period. Plaintiff asserts that all of these individuals are ascertainable because the class members can

1 readily be determined through examination of Defendant’s files. Given that the Class consists of  
2 approximately 580 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*  
3 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*  
4 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)  
5 Here, Plaintiff asserts that the 580 current and former employees that comprise the Class can be  
6 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.  
7 Nordrehaug at ¶30.

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

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

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

20 Here, Plaintiff contends that common questions of law and fact are present, and specifically the  
21 common questions of whether Defendant properly calculated the regular rate when paying overtime,  
22 whether the Defendant failed to provide meal and rest periods to class members, whether Defendant  
23 failed to provide required expense reimbursement, and whether Class Members are entitled to damages  
24 and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that common  
25 questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

27 The typicality requirement requires the Plaintiff to demonstrate that the members of the Class  
28 have the same or similar claims as the Plaintiff. “The typicality requirement is met when the claims

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

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

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

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

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

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

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

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

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

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

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

16 The Court has broad discretion in approving a practical notice program. The Parties have  
17 agreed upon procedures by which the Class Members will be provided with written notice of the  
18 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance  
19 with the Agreement, Defendant will provide to the Settlement Administrator a confidential electronic  
20 spreadsheet containing the Class Data. (Agreement at ¶ III(38)(b).) Within 14 days after receiving the  
21 Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via  
22 first-class U.S. Mail using the most current mailing address information available. (Agreement at  
23 ¶ III(38)(b).) The Class Notice, drafted jointly and agreed upon by the Parties through their respective  
24 counsel and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the  
25 Agreement.) The Class Notice will include, among other information: (i) information regarding the  
26 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the  
27 Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated  
28 Settlement Share for each of the Class Members; (v) the amount of attorneys’ fees and expenses to be  
sought; (v) the amount of the Plaintiff’s service award request; and (vi) the anticipated expenses of the  
Settlement Administrator. Decl. Nordrehaug at ¶ 32.

1 The Class Notice will state that the Class Members shall have forty-five (45) days from the date  
2 that the Notice is mailed to them to request exclusion (opt-out) or to submit a written objection.  
3 (Agreement at ¶ III(38)(c).) In the event of a re-mailing, this deadline will be extended by an additional  
4 15 days. Class Members shall be given the opportunity to object to the Settlement and/or requests for  
5 attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(38)(c).)  
6 Class Members who do not submit a timely and proper request to opt-out will automatically receive a  
7 payment of their Settlement Share. This notice program was designed to meaningfully reach the Class  
8 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug  
9 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and  
10 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and  
11 3.769(f).

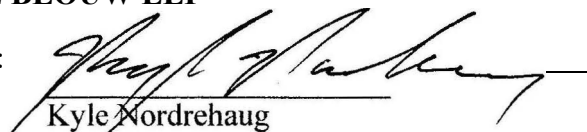
12 **VII. CONCLUSION**

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

17 Dated: January 3, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

19 By:

  
20 Kyle Nordrehaug  
21 Attorney for Plaintiff