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

14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 MICHAEL FARTHING, JEREMIAH
16 BURKE and JARVIS RICHMOND,
17 individuals, on behalf of themselves and
18 on behalf of all persons similarly
19 situated,

20 Plaintiffs,

21 vs.

22 MILESTONE TECHNOLOGIES, INC., a
23 California Corporation ; and DOES 1
24 through 50, inclusive,

25 Defendants.

Case No. CGC-21-591251

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

Hearing Date: October 12, 2022
Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept: 302

Action Filed: May 4, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Jeremiah Burke, Andrea Hughes, and Jarvis Richmond (“Plaintiffs”) respectfully
3 submit this memorandum in support of the unopposed motion for preliminary approval of the proposed
4 class action settlement with Defendant Milestone Technologies, Inc. (“Defendant”), and seeks entry
5 of an order: (1) preliminarily approving the proposed settlement of this class action with Defendant;
6 (2) for settlement purposes only, conditionally certifying the Class, which is comprised of “all
7 individuals who were employed by Defendant in California, who were classified as hourly, non-exempt
8 employees, and who worked as Screening Associates, Team Lead Screening Associates, or Shift Lead
9 Screening Associates at any time during the Class Period” of May 4, 2017 through June 25, 2022; (3)
10 provisionally appointing Plaintiffs Jeremiah Burke, Andrea Hughes, and Jarvis Richmond as the
11 representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug,
12 and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the
13 Class; (5) approving the form and method for providing class-wide notice; (6) directing that notice of
14 the proposed settlement be given to the class; (7) appointing Simpluris as Settlement Administrator,
15 and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion for final approval of the
16 settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys' fees and
17 expenses.

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

22 As consideration for this Settlement, the Gross Settlement Amount is Six Hundred Thirty
23 Thousand Dollars (\$630,000.00) to be paid by Defendant, as set forth in the Agreement. The Gross
24 Settlement Amount will settle all issues pending in the Action between the Parties and will be made
25 in full and final settlement of the Released Class Claims. The Gross Settlement Amount includes all
26 payments of Settlement Shares to the Participating Class Members, Settlement Administration
27

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

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

6 On January 25, 2022, the Parties participated in an all-day mediation session presided over by
7 Tripper Ortman, Esq., a respected and experienced mediator of wage and hour class actions. Following
8 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
9 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
10 substantial monetary payment, and there are substantial litigation and class-certification risks.
11 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
12 and enter the proposed order submitted herewith.

13 **II. DESCRIPTION OF THE SETTLEMENT**

14 The Gross Settlement Amount is Six Hundred Thirty Thousand Dollars (\$630,000.00).
15 (Agreement at ¶ I(21).) Under the Settlement, the Gross Settlement Amount consists of the following
16 elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class
17 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class
18 Representative Service Payments to the Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶ I(21).)
19 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶
20 III(40).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at
21 ¶ III(40).) Decl. Nordrehaug at ¶15.

22 Defendant shall fund the Gross Settlement Amount within thirty (30) days of the Effective
23 Date. (Agreement at ¶ III(47).) The Settlement Shares to Participating Class Members will be mailed
24 by the Settlement Administrator fifteen (15) days after Defendant fully funds the Gross Settlement
25 Amount. (Agreement at ¶ III(47).) Decl. Nordrehaug at ¶16.

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

1 Settlement Administration Expenses. (Agreement at ¶ I(23).) The Net Settlement Amount will be
2 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
3 (“Participating Class Members”). (Agreement at ¶¶ I(26), III(42).) The Settlement Share will be
4 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
5 total number of weeks worked by all Participating Class Members during the Class Period to determine
6 a dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the
7 number of weeks worked by each Participating Class Member and multiply it by the Weekly Rate to
8 calculate their Settlement Share. (Agreement at ¶ III(42)(b).) Workweeks will be based on
9 Defendant’s records, however Class Members will have the right to challenge the number of
10 workweeks. Decl. Nordrehaug at ¶17.

11 Class Members may choose to opt-out of the Settlement by following the directions in the Class
12 Notice. (Agreement at ¶ III(44)(c), Ex. A.) All Class Members who do not "opt out" will be deemed
13 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
14 Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their allocation
15 of the PAGA Payment, respectively, and will remain bound by the release of the Released PAGA
16 Claims, regardless of their request for exclusion. (Agreement at ¶ III(44)(c)(iii).) Finally, the Class
17 Notice will also advise the Class Members of their right to object to the Settlement and/or dispute their
18 workweeks. (Agreement at ¶ III(44)(c), Ex. A.) Decl. Nordrehaug at ¶18.

19 A Participating Class Member must cash his or her Settlement Share check within 180 days
20 after it is mailed. (Agreement at ¶ III(48).) The Settlement Administrator will send a reminder to
21 Participating Class Members who have not cashed their checks 60 days before the expiration date.
22 (Agreement at ¶ III(48).) Any settlement checks not cashed within 180 days will be voided and any
23 funds from such uncashed checks will be paid to the California State Controller’s Unclaimed Property
24 Fund in the name of the individual who failed to cash their check. (Agreement at ¶ III(48).) Decl.
25 Nordrehaug at ¶19.

26 Based upon the lowest bid received from qualified vendors, the Parties have agreed to use
27 Simpluris as the Settlement Administrator. (Agreement at ¶ III(43).) From the Gross Settlement
28 Amount, the Settlement Administrator shall be paid for the expenses of administering the Settlement

1 in an amount not to exceed \$15,000. (Agreement at ¶ III(41)(d).) Decl. Nordrehaug at ¶20.

2 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
3 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
4 at ¶ III(41)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
5 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ III(41)(b).) Subject
6 to Court approval, the Agreement provides for a payment of no more than \$10,000 to each of the
7 Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ III(41)(a).) Decl. Nordrehaug
8 at ¶21.

9 The Parties will seek approval from the Court for the PAGA Payment of \$20,000 out of the
10 Gross Settlement Amount, which shall be allocated 75% (\$15,000) to the LWDA as the LWDA's share
11 of the PAGA Payment pursuant to PAGA and 25% (\$5,000) will be distributed to the Aggrieved
12 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
13 III(41)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
14 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement
15 at ¶ III(41)(c).) As set forth in the accompany proof of service, the LWDA has been served with this
16 motion and the Agreement. Decl. Nordrehaug at ¶22.

17 **III. CASE BACKGROUND**

18 The description of the case and claims, along with the procedural history is set forth in the
19 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
20 exchange of documents and information in connection with the Action which permitted Class Counsel
21 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
22 in mediation on January 25, 2022 with Tripper Ortman, Esq., which after arm's length negotiations,
23 resulted in this Settlement. Decl. Nordrehaug, ¶12.

24 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 25 **GRANT PRELIMINARY APPROVAL**

26 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
27 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
28 California "[p]ublic policy generally favors the compromise of complex class action litigation."

1 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
2 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
3 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
4 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
5 denied, 459 U.S. 1217 (1983)).

6 Preliminary approval is the first of three steps that comprise the approval procedure for
7 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
8 members. The third step is a final settlement approval hearing, at which evidence and argument
9 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
10 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
11 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

1 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

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

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

1 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

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

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

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

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

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

25 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
26 Claims" are "any and all federal, state, local and common law claims for unpaid wages and overtime
27 compensation (including any claims based on working "off-the-clock" and any rounding policy), unpaid
28 minimum wages, unpaid rest break premiums, unpaid meal period premiums, unreimbursed business
expenses, waiting time penalties, wage statement penalties, any and all claims for civil penalties
(including those asserted under PAGA) based on any of the facts alleged in the Action or claims that
could have been alleged based upon the facts set forth 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 class claims outside of the Class Period". (Agreement at ¶ III(50)(a).)

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

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

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
19 is Six Hundred Thirty Thousand Dollars (\$630,000.00). The Settlement is all-in with no reversion to
20 Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

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

17 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
18 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
19 receive payment according to the same formula. (Agreement at ¶ III(42)(b).) For the 1,175 Class
20 members who worked 27,350 work weeks, the Gross Settlement Amount provides an average value
21 of \$536 per Class Member and \$23 per work week, and after deductions, the Net Settlement Amount
22 provides an average recovery of \$285 per Class Member and \$12.24 per work week. Decl. Nordrehaug,
23 ¶6.

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

1 \$29,931, the maximum potential meal period damages, after deducting meal premiums paid by
2 Defendant, wages were estimated to be \$246,220, the maximum potential rest period damages were
3 estimated to be \$3,413,438 based upon a 100% violation predicated on a premise restriction theory, the
4 maximum potential damages for off the clock work were estimated to be \$568,906, and the maximum
5 potential damages for failure to provide expense reimbursement for cell-phones was calculated to be
6 \$53,343. In total, the damages for the Class were calculated to have a maximum potential total value
7 of \$4,311,839. In addition, Plaintiffs calculated that the maximum value of the potential waiting time
8 penalties were between \$3,199,778 and \$4,093,314, depending on the predicate violation, and the
9 maximum value of the potential wage statement penalties were \$1,687,650. These wage statement and
10 waiting time penalties claims potentially have a much smaller value or no value, even if damages were
11 awarded, to the extent that they are only derivative of the rest break claims.⁴ Decl. Nordrehaug, ¶6.

12 Consequently, the Gross Settlement Amount represents more than 14% of the value of the
13 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
14 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
15 both the risk of class certification and the risk of establishing class-wide liability on all claims. In
16 addition, the above valuation likely overstates the maximum damages by at least 25%, as the valuations
17 were based on 39,000 workweeks, when the actual workweeks for the Class have now been verified

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

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

1 by Defendant's declaration to be 27,350. Given the amount of the Settlement as compared to the
2 potential value of the claims, the Settlement is most certainly fair and reasonable.⁶ Clearly, the goal
3 of this litigation has been met. Decl. Nordrehaug, ¶6.

4 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
5 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
6 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
7 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
8 argued that all work time was paid for and that the work time recording practices were lawful.
9 Defendant contend that its meal and rest period policies fully complied with California law and that
10 Defendant's timekeeping system recorded meal periods, paid for missed meal periods, and was not
11 required to record rest periods. Plaintiffs' theory of liability for rest breaks was based upon an on
12 premise restriction, which Defendant disputed and argued that this theory has been rejected by Courts
13 as sufficient alone to establish liability for on-duty rest breaks. *See, e.g., Ritenour v. Carrington Mortg.*
14 *Servs., LLC*, 2018 WL 5858658, at *7 (C.D. Cal. 2018) (holding that defendant's on-premises rest
15 period policy was facially valid and legal); *Hubbs v. Big Lots Stores, Inc.*, 2018 WL 5264141, at *5
16 (C.D. Cal. 2018) (citing *Augustus* and dismissing on-premises rest period claims for failure to state a
17 claim); *Bell v. Home Depot U.S.A., Inc.*, 2017 WL 1353779, at *2 (E.D. Cal. 2017) (declaring
18 defendant's argument that *Augustus* implied on-premises rest periods were legal as "more persuasive
19 and accurate" than plaintiff's argument to the contrary). As to expenses reimbursement, Defendant
20 contended that it paid for business expenses including personal cell phone usage. Finally, Defendant
21 could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
22 weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period

23
24 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 claims. Defendant also argues that based on its facially lawful practices, they acted in good faith and
2 without willfulness, which if accepted would negate the claims for waiting time penalties and/or
3 inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce
4 any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant
5 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
6 Nordrehaug, ¶ 24.

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

19 After arm's length negotiations between experienced and informed counsel, the Parties
20 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
21 \$630,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

28 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
(9th Cir. 2000)).

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

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

6 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
7 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(41)(a).)
8 Plaintiffs performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
9 Plaintiffs will present detailed declarations addressing their work and service at the time of final
10 approval. For purposes of this preliminary approval stage, the requested service award of \$10,000 is
11 well within the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier*
12 *1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average
13 class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
14 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was \$375);
15 *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. 2008) (awarding
16 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007
17 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and
18 a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded
19 to class representatives to compensate the employees for the time and effort expended on the case, for
20 the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an
21 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

1 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
2 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
3 possessed sufficient information to make an informed judgment regarding the likelihood of success on
4 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

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

19 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
20 213 F.3d at 459).

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

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

26 Plaintiffs contend that the proposed settlement meets all of the requirements for class
27 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
28 Court may appropriately approve the Class as defined in the Agreement. This Court should
conditionally certify the Class for settlement purposes only, defined as follows:

1 All individuals who were employed by Defendant in California, who were classified as
2 hourly, non-exempt employees, and who worked as Screening Associates, Team Lead
3 Screening Associates, or Shift Lead Screening Associates at any time during the Class
4 Period.

(Agreement at ¶ I(3).)

5 The “Class Period” is from May 4, 2017 through June 25, 2022. (Agreement at ¶ I(10).)

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

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

10 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
11 of a common or general interest, of many persons, or when the parties are numerous,
12 and it is impracticable to bring them all before the court...” The party seeking
13 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.

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

15 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
16 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
17 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
18 settlement only. (Agreement at ¶ II(36).)

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

20 Plaintiffs bring this Action on behalf of a Class of individuals during the applicable Class
21 Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can
22 readily be determined through examination of Defendant’s files. Given that the Class consists of
23 approximately 1,175 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
24 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
25 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
26 Here, Plaintiffs assert that the 1,175 current and former employees that comprise the Class can be
27 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.
28 Nordrehaug at ¶30.

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

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

7 Commonality exists if there is a predominant common legal question regarding how an
8 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
9 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
10 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
11 certification stage since the question is “essentially a procedural one that does not ask whether an action
12 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

13 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
14 common questions of whether Defendant properly recorded work time, whether the Defendant failed
15 to provide meal and rest periods to class members, whether class members were lawfully compensated
16 for all hours worked, whether Defendant failed to provide required expense reimbursement, and
17 whether Class Members are entitled to damages and penalties as a result of these practices. Decl.
18 Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose such
19 a finding for purposes of this Settlement only.

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

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

27 In the instant case, Plaintiffs contend that there can be little doubt that the typicality requirement
28 is satisfied. The Plaintiffs, like every other member of the Class, worked for Defendant as non-exempt

1 screening employee during the Class Period. Plaintiffs contend that, like every other member of the
2 Class, they were subject to the same practices and policies of Defendant and are subject to the same
3 defenses. Thus, Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the
4 same course of conduct by the Defendant, involve the same employment policies and practices of
5 Defendant, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of
6 settlement, Plaintiffs assert that the typicality requirement is met as to the common issues presented in
7 this case. Defendant disputes typicality but Defendant does not oppose a finding of typicality for
8 purposes of this Settlement only.

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

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

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

22 To certify a class, the Court must also determine that a class action is superior to other available
23 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
24 common issues will reduce litigation costs and promote greater efficiency, a class action may be
25 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
26 1996). As courts have previously observed:

27 Absent class treatment, each individual plaintiff would present in separate, duplicative
28 proceedings the same or essentially the same arguments and evidence, including expert
testimony. The result would be a multiplicity of trials conducted at enormous expense

1 to both the judicial system and the litigants. “It would be neither efficient nor fair to
2 anyone, including defendants, to force multiple trials to hear the same evidence and
decide the same issues.”

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

4 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
5 as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not
6 dispute a finding of superiority in this action for purposes of this Settlement only.

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

8 The Court has broad discretion in approving a practical notice program. The Parties have
9 agreed upon procedures by which the Class Members will be provided with written notice of the
10 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
11 with the Agreement, Defendant will provide to the Settlement Administrator a confidential electronic
12 spreadsheet containing the Class Data. (Agreement at ¶ III(44)(b).) Within 14 days after receiving the
13 Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via
14 first-class U.S. Mail using the most current mailing address information available. (Agreement at
15 ¶ III(44)(b).) The Class Notice, drafted jointly and agreed upon by the Parties through their respective
16 counsel and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the
17 Agreement.) The Class Notice will include, among other information: (i) information regarding the
18 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the
19 Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated
20 Settlement Share for each of the Class Members; (iii) the amount of attorneys’ fees and expenses to be
21 sought; (v) the amount of the Plaintiffs’ service award requests; and (vi) the anticipated expenses of
22 the Settlement Administrator. Decl. Nordrehaug at ¶ 32.

23 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
24 the Notice is mailed to them to request exclusion (opt-out) or to submit a written objection. (Agreement
25 at ¶ III(44)(c).) In the event of a re-mailing, this deadline will be extended by an additional 15 days.
26 Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys’
27 fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(44)(c).) Class
28 Members who do not submit a timely and proper request to opt-out will automatically receive a

1 payment of their Settlement Share. This notice program was designed to meaningfully reach the Class
2 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
3 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
4 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
5 3.769(f).

6 **VII. CONCLUSION**

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

11 Dated: September 19, 2022 **BLUMENTHAL NORDREHAUG BHOWMIK**
12 **DE BLOUW LLP**

13 By: /s/ Kyle Nordrehaug
14 Kyle R. Nordrehaug, Esq.
15 Attorney for Plaintiffs
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