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

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 MARCOS ANTONIOS, on behalf of the
16 State of California, as a private attorney
17 general, and as an individual, on behalf of
18 himself and on behalf of all persons
19 similarly situated,

20 Plaintiff,

21 vs.

22 REHABCARE GROUP EAST, LLC., a
23 California Limited Liability Company; and
24 Does 1 through 50, Inclusive,

25 Defendants.

Case No. 21STCV15497

[Consolidated with Case No. 21STCV15647]

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

Hearing Date: July 12, 2023
Hearing Time: 9:00 a.m.

Judge: Hon. Elihu Berle
Dept: SS-6

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT.....	3
III.	CASE BACKGROUND.....	5
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	5
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	6
B.	Factors To Be Considered In Granting Preliminary Approval.....	7
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	8
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	10
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	13
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	14
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	15
A.	California Code of Civil Procedure § 382	15
B.	The Proposed Class Is Ascertainable and Numerous	16
C.	Common Issues of Law and Fact Predominate.....	16
D.	The Claims of the Plaintiff Are Typical of the Class Claims	17
E.	The Class Representation Fairly and Adequately Protected the Class	17
F.	The Superiority Requirement Is Met	18
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	18
VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases:

Page:

<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	12
<i>Boggs v. Divested Atomic Corp.</i> , 141 F.R.D. 58 (S.D. Ohio 1991)	18
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	16
<i>Boyd v. Bechtel Corp.</i> , 485 F.Supp. 610 (N.D. Cal. 1979)	7
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	5
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	5, 6, 7, 9
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	11, 13, 14
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	12
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	6
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7 th Cir. 1982)	6
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	16
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	12, 13, 14
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	6
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	11, 17
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	13

1	<i>In re Tableware Antitrust Litig.</i> ,	
2	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
3	<i>In re Wash. Public Power Supply System Sec. Litig.</i> ,	
4	720 F. Supp. 1379 (D. Ariz. 1989)	7, 10
5	<i>Kirkorian v. Borelli</i> ,	
6	695 F. Supp. 446 (N.D. Cal. 1988)	7
7	<i>Kullar v. Foot Locker</i> ,	
8	168 Cal. App. 4th 116 (2008)	8
9	<i>Linder v. Thrifty Oil Co.</i> ,	
10	23 Cal. 4th 429 (2003)	16
11	<i>Lockheed Martin Corp. v. Superior Ct.</i> ,	
12	29 Cal. 4th 1096, 1108 (2003)	11
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
14	2008 WL 4473183 (S.D.Cal. 2008)	13
15	<i>Ma v. Covidien Holding, Inc.</i> ,	
16	2014 WL 2472316, (C.D. Cal. 2014)	11
17	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
18	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	13
19	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
20	221 F.R.D. 523 (C.D. Cal. 2004)	7
21	<i>Nordstrom Comm'n Cases</i> ,	
22	186 Cal. App. 4th 576 (2010)	5, 11
23	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	
24	688 F.2d. 615 (9th Cir. 1982)	5, 7
25	<i>Rose v. City of Hayward</i> ,	
26	126 Cal.App.3d 926 (1981)	16
27	<i>Salazar v. See's Candy Shops Inc.</i> ,	
28	64 Cal.App.5th 85 (2021)	12
	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
	34 Cal. 4th 319 (2004)	15, 16, 18
	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	6
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	11
	<i>Tate v. Weyerhaeuser Co.</i> ,	
	723 F.2d 598 (8th Cir. 1983)	17

1	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
2	97 F.3d 1227 (9th Cir. 1996)	18
3	<i>Vasquez v. Superior Court</i> ,	
4	4 Cal.3d 800 (1971)	6
5	<i>Viceral v. Mistras Grp., Inc.</i> ,	
6	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016).....	11
7	<i>Weinberger v. Kendrick</i> ,	
8	698 F.2d 61 (2d Cir. 1982), <i>cert. denied</i> 464 U.S. 818 (1983).....	7
9	<i>Wershba v. Apple Computer, Inc.</i> ,	
10	91 Cal.App.4th 224 (2001)	6, 7
11	<u>Statutes, Rules and Regulations:</u>	
12	California Code of Civil Procedure §382	15
13	California Labor Code §203	11
14	California Labor Code §226	11
15	California Rules of Court, rule 3.766	19
16	California Rules of Court, rule 3.769	6, 19
17	<u>Secondary Sources:</u>	
18	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992)	5, 6, 16
19	<i>Manual For Complex Litigation</i> , (Second), §30.44, 41.43 (1993).....	6
20	3B J. Moore, <i>Moore's Federal Practice</i> §§23.80 - 23.85 (2003)	6
21		
22		
23		
24		
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1 **I. INTRODUCTION**

2 Plaintiff Marcos Antonios (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Rehabcare Group East, LLC (“Defendant”), and seeks entry of an order: (1) preliminarily approving
5 the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all all individuals who (1) are or previously
7 worked for Defendant Rehabcare Group East LLC in California who were hourly paid employees and
8 who worked at any time during the Class Period, including those who worked in one or more of the
9 following positions: Physical Therapists, Occupational Therapists, Speech Language Pathologists,
10 Rehab Technicians, Rehab Administrative Assistants, Program Assistants, Rehab Administrative
11 Assistant PRNs, Program Assistant PRNs, Occupational Therapist PRNs, Physical Therapist PRNs,
12 Certified Occupational Therapy Assistants, Physical Therapy Assistants, Program Manager, Program
13 Director 1 RTs, Physical Therapy Assistant PRNs, Certified Occupational Therapy Assistant PRNs,
14 Rehab Technician PRNs, Speech Language Pathologist PRNs, Program Director 1 PTs, Program Direct
15 1 SLPs, Program Director PRN, Wellness Center Coordinator PRNs, Wellness Center Coordinator
16 NEs, Wellness Program Coordinators, Program Director 1 OTs, Program Director 1 COTAs, RCL
17 PTAs, Rehab Agency Administrator NEs, Rehab Agency Coordinator NEs, Program Director 3 Rehab
18 Tech, and Program Director 1, and (2) excluding claims for the Class Period for those individuals who
19 worked for Defendant in California during that time and participated in the *Stonehocker* settlement,
20 California Northern District Case No. 4:19-cv-02494-YGR”; (3) provisionally appointing Plaintiff as
21 the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
22 Nordrehaug, Aparajit Bhowmik, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De
23 Blouw LLP as Class Counsel for the Class; (5) approving the form and method for providing class-wide
24 notice; (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM
25 Group, Inc. as the Administrator; and (8) scheduling a final approval hearing date in approximately four
26 months to consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment,
27 and Plaintiff’s motion for approval of attorneys’ fees and expenses. Plaintiff and Defendant
28 (collectively the “Parties”) have reached a full and final settlement of the above-captioned action, which

1 is set forth in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with
2 the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
3 Nordrehaug ("Decl. Nordrehaug"), served and filed herewith, and the form of the Agreement is based
4 on the Los Angeles Superior Court model form for class and PAGA settlements. A redline comparison
5 between the Agreement and the Court's model form for a class and PAGA settlement is attached as
6 Exhibit #2 to the Decl. Nordrehaug.

7 As consideration for this Settlement, the Gross Settlement Amount is our Four Hundred Ninety
8 Thousand Dollars (\$490,000) to be paid by Defendant, as set forth in the Agreement. The Gross
9 Settlement Amount will settle all issues pending in the Action between the Parties and will be made
10 in full and final settlement of the Released Class Claims. The Gross Settlement Amount includes all
11 payments of Individual Class Payments to the Participating Class Members, Administration Expenses
12 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class
13 Representative Service Payment, and the PAGA Penalties. The Gross Settlement Amount does not
14 include the employer's share of payroll taxes which will be separately paid by Defendant. The
15 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.
16 Nordrehaug at ¶3.

17 The following is a table of the key financial terms of the Settlement and the proposed
18 deductions:

19	\$490,000 (Gross Settlement Amount)
20	- \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
21	- \$22,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
22	- \$163,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
	- \$5,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
	- \$13,000 (Administration Expenses Payment - not to exceed amount)
	\$276,667 (Net Settlement Amount)

23 Based upon 446 Class Members who collectively worked 16,645 Workweeks, the Gross Settlement
24 Amount provides a value of \$1,098 per Class Member and \$29 per Workweek and after deductions,
25 the Net Settlement Amount provides an average recovery of \$620 per Class Member and \$16.62 per
26 Workweek. Decl. Nordrehaug at ¶6.

27
28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 On February 16, 2023, the Parties participated in an all-day mediation session presided over by
2 Jeffrey Krivis, Esq., a respected and experienced mediator of wage and hour class actions. Following
3 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
4 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
5 substantial monetary payment, and there are substantial litigation and class-certification risks.
6 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
7 and enter the proposed order submitted herewith.

8 **II. DESCRIPTION OF THE SETTLEMENT**

9 The Gross Settlement Amount is Four Hundred Ninety Dollars (\$490,000). (Agreement at ¶
10 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all
11 Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the
12 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class
13 Representative Service Payment; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.)
14 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶
15 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶
16 3.1.) Decl. Nordrehaug at ¶15.

17 Within fifteen (15) days of the Effective Date, Defendant shall deposit the Gross Settlement
18 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
19 to Participating Class Members along with the other Court-approved distributions shall be made by the
20 Administrator within fourteen (14) days after Defendant fully funds the Gross Settlement Amount.
21 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

22 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
23 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
24 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
25 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
26 Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement
27 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (i)
28 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating

1 Class Members during the Class Period and (ii) multiplying the result by each Participating Class
2 Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendant's records;
3 however, Class Members will have the right to challenge the number of Workweeks. Decl. Nordrehaug
4 at ¶17.

5 Class Members may choose to opt-out of the Settlement by following the directions in the Class
6 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
7 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
8 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
9 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
10 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
11 (Agreement at ¶¶ 1.39 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their
12 right to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex.
13 A.) Decl. Nordrehaug at ¶18.

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

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

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

28 Subject to Court approval, Five Thousand Dollars (\$5,000) will be paid from the Gross

1 Settlement Amount for PAGA Penalties under the California Private Attorneys General Act, Cal. Labor
2 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
3 the PAGA Penalties shall be allocated as follows: 75% (\$5,750) shall be allocated to the Labor
4 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$1,250)
5 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
6 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompany
7 proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug
8 at ¶22.

9 **III. CASE BACKGROUND**

10 The description of the case and claims, along with the procedural history, is set forth in the
11 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
12 exchange of documents and information in connection with the Action which permitted Class Counsel
13 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
14 in mediation on February 16, 2023 with Jeffrey Krivis, Esq., which after arm's length negotiations,
15 resulted in this Settlement. Decl. Nordrehaug, ¶12.

16 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 17 GRANT PRELIMINARY APPROVAL**

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

26 Preliminary approval is the first of three steps that comprise the approval procedure for
27 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
28 members. The third step is a final settlement approval hearing, at which evidence and argument

1 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
2 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
3 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

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 *Federal Practice* §§23.80 - 23.85 (2003).

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

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

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

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

1 all factors should be considered. The analysis has been summarized as follows:

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

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

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

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

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

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

24 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
25 Claims" are "all claims pled or which could have been pled based on the factual allegations contained
26 in the operative complaint which occurred during the Class Period including claims for: (a) failure to
27 pay all minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal
28 periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest
periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage
statements; (f) failure to reimburse business expenses; (h) all claims for unfair business practices that
could have been premised on the facts, claims, causes of action or legal theories described above
("Released Class Claims"). Excluded from the Released Class Claims are all other claims, Plaintiff's
individual claims pled in causes of action 9-11 in the Operative Complaint, claims for vested benefits,
wrongful termination, unemployment insurance, disability, social security, workers' compensation, and
class claims outside of the Class Period." (Agreement at ¶¶ 1.38, 6.2.)

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 Jeffrey Krivis, 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 punch 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, which was memorialized in the form of a Memorandum of Understanding. 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 Four Hundred Ninety Dollars (\$490,000). 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 two years, 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 this Action against Defendant and then litigating 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 this Action. Class Counsel is also mindful of and recognizes the inherent

1 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
2 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
3 is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

11 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
12 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
13 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 446 Class
14 Members who collectively worked 16,645 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
15 Amount provides a value of \$1,098 per Class Member and \$29 per Workweek and after deductions,
16 the Net Settlement Amount provides an average recovery of \$620 per Class Member and \$16.62 per
17 Workweek. Decl. Nordrehaug, ¶6.

18 The calculations to compensate for the amount due to the Class Members at the time this
19 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
20 mediation. Class Counsel analyzed the data for putative class members and determined the potential
21 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
22 overtime was \$4,880, the maximum value of the claim for unpaid wages due to alleged off-the-clock
23 work at 1 hour per week was \$498,905, the maximum potential meal period damages were estimated
24 to be \$280,356 based upon a potential 24% violation rate observed in the time records, the maximum
25 potential rest period damages were estimated to be \$1,576,653 based upon a 100% violation rate for
26 all shifts, and the maximum potential damages for failure to provide expense reimbursement were
27 calculated to be \$131,686. In total, the damages for the Class were calculated to have a maximum
28 potential total value of \$2,492,480. In addition, Plaintiff calculated that the maximum value of the

1 potential waiting time penalties were \$1,328,050, and the maximum value of the potential wage
2 statement penalties were \$171,650.⁴ Decl. Nordrehaug, ¶6.

3 Consequently, the Gross Settlement Amount represents more than 19% of the potential
4 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
5 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
6 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
7 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
8 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

9 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
10 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
11 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
12 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
13 work time was properly recorded and paid for and that there was no unpaid overtime. Defendant
14 contends that its meal and rest period policies fully complied with California law and Defendant did
15 not fail to provide the opportunity for legally required meal and rest breaks. As to expense

17 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
20 meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class
21 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
22 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
23 dispute as to whether and when the wages were due.").

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

27 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
28 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
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma 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 reimbursement, Defendant contended that it did not fail to provide reimbursement for necessary
2 business expenses and that there were no such expenses that had not already been reimbursed or that
3 claimed expenses were incurred voluntarily and/or for the convenience of employees and is therefore
4 not required reimbursement. Defendant argued that the decisions in *Brinker v. Superior Court*, 53 Cal.
5 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar*
6 *v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value,
7 and class certifiability as to the meal and rest period claims. Defendant also argues that based on its
8 facially lawful practices, it acted in good faith and without willfulness, which if accepted would negate
9 the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendant's
10 defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that
11 these defenses could be overcome, Defendant maintains these defenses have merit and therefore present
12 a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

25 After arm's length negotiations between experienced and informed counsel, the Parties
26 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
27 \$490,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

1 and likely duration of further litigation likewise favors the settlement. Regardless of
2 how this Court might have ruled on the merits of the legal issues, the losing party likely
3 would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement.'"

4 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
5 (9th Cir. 2000)).

6 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
7 **Class Representatives or Segments of The Class**

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

13 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
14 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
15 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
16 Declaration of Plaintiff Antonios is presented herewith in support. For purposes of this preliminary
17 approval stage, the requested service award of \$10,000 is well within the accepted range of awards for
18 purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS
19 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
20 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
21 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*,
22 2008 WL 4473183, *7 (S.D. Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in
23 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding
24 \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As explained
25 in *Glass*, service awards are routinely awarded to class representatives to compensate the employees
26 for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer
27 and retaliation therefrom, and to serve as an incentive to vindicate the statutory rights of all employees.
28 2007 WL 221862 at *16-17.

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

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

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

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

22 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
23 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
24 a necessary ticket to the bargaining table' where the parties have sufficient information
25 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 a better position to evaluate the fairness of this Settlement because
Class Counsel performed written discovery, obtained a full production of documents through informal
discovery, received all necessary information which was evaluated with the assistance of an expert, and

1 performed independent investigations and due diligence to confirm the accuracy of the information
2 supplied by Defendant.

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

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

8 All individuals who (1) are or previously worked for Defendant Rehabcare Group East
9 LLC in California who were hourly paid employees and who worked at any time during
10 the Class Period, including those who worked in one or more of the following positions:
11 Physical Therapists, Occupational Therapists, Speech Language Pathologists, Rehab
12 Technicians, Rehab Administrative Assistants, Program Assistants, Rehab
13 Administrative Assistant PRNs, Program Assistant PRNs, Occupational Therapist
14 PRNs, Physical Therapist PRNs, Certified Occupational Therapy Assistants, Physical
15 Therapy Assistants, Program Manager, Program Director 1 RTs, Physical Therapy
16 Assistant PRNs, Certified Occupational Therapy Assistant PRNs, Rehab Technician
PRNs, Speech Language Pathologist PRNs, Program Director 1 PTs, Program Direct
1 SLPs, Program Director PRN, Wellness Center Coordinator PRNs, Wellness Center
Coordinator NEs, Wellness Program Coordinators, Program Director 1 OTs, Program
Director 1 COTAs, RCL PTAs, Rehab Agency Administrator NEs, Rehab Agency
Coordinator NEs, Program Director 3 Rehab Tech, and Program Director 1, and (2)
excluding claims for the Class Period for those individuals who worked for Defendant
in California during that time and participated in the *Stonehocker* settlement, California
Northern District Case No. 4:19-cv-02494-YGR.

17 (Agreement at ¶ 1.5.)

18 The “Class Period” is from April 26, 2017 through November 30, 2020. (Agreement at ¶ 1.13.)

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

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

23 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
24 of a common or general interest, of many persons, or when the parties are numerous,
25 and it is impracticable to bring them all before the court...” The party seeking
26 certification has the burden to establish the existence of both an ascertainable class and
27 a well-defined community of interest among class members. (*citations omitted*). The
“community of interest” requirement embodies three factors: (1) predominant common
28 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.

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

1 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
2 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
3 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
4 this settlement only. (Agreement at ¶ 2.9.)

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

6 Plaintiff brings this Action on behalf of a Class of hourly paid employees who worked for
7 Defendant during the applicable Class Period. Plaintiff asserts that all of these individuals are
8 ascertainable because the class members can readily be determined through examination of Defendant's
9 files. Given that the Class consists of approximately 446 members, Plaintiffs maintain that numerosity
10 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
11 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
12 satisfies numerosity requirement.) Here, Plaintiff asserts that the 446 individuals who comprise the
13 Class can be identified based on Defendant's records and are sufficiently numerous for class
14 certification. Decl. Nordrehaug at ¶30.

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

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

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

27 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
28 common questions of whether Defendant's practices were lawful, whether Class members were

1 lawfully compensated for all hours worked, whether Defendant properly paid overtime wages, whether
2 the Defendant failed to provide all legally required meal and/or rest periods to class members, whether
3 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
4 to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that
5 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

13 In the Action, Plaintiff contends that there can be little doubt that the typicality requirement is
14 satisfied. The Plaintiff worked for Defendant as an hourly employee during the Class Period. Plaintiff
15 contends that, like every other member of the Class, he was subject to the same practices and policies
16 of Defendant and was subject to the same defenses. Thus, Plaintiff asserts that the claims of the Plaintiff
17 and the Class Members arise from the same course of conduct by the Defendant, involve the same
18 employment policies and practices of Defendant, and are based on the same legal theories. Decl.
19 Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement is
20 met as to the common issues presented in this case. Defendant disputes typicality but Defendant does
21 not oppose a finding of typicality for purposes of this Settlement only.

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

23 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
24 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
25 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
26 met here. First, Plaintiff is well aware of his duties as the representative of the class and has actively
27 participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel,
28 provided documents to counsel and participated in the investigation and negotiations in the Action.

1 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
2 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
3 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
4 the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied
5 but will not oppose such a finding for purposes of this Settlement only.

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

7 To certify a class, the Court must also determine that a class action is superior to other available
8 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
9 common issues will reduce litigation costs and promote greater efficiency, a class action may be
10 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
11 1996). As courts have previously observed:

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

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

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

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

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

1 a Spanish translation. (Agreement at ¶ 1.11.)

2 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
3 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)

4 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
5 impact on the rights of the Class Members if they do not opt out, including a description of the
6 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
7 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
8 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award
9 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

10 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
11 the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), which
12 Response Deadline shall be extended in the event of a re-mailing. (Agreement at ¶¶ 1.42, 8.5(a).)
13 Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys’
14 fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members
15 who do not submit a timely and proper request to opt-out will automatically receive a payment of their
16 Individual Class Payment. This notice program was designed to meaningfully reach the Class Members
17 and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32.
18 The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best
19 notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

20 **VII. CONCLUSION**

21 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
22 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
23 approval hearing for a date approximately four months from the date of preliminary approval.

24 Dated: June 5, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

26 By: /s/ Kyle Nordrehaug
27 Kyle R. Nordrehaug, Esq.
28 Attorney for Plaintiff