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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

GUILLERMO NUNEZ and ERIBERTO
AQUINO, on behalf of the State of
California, as private attorneys general, and
as individuals on behalf of themselves and
on behalf of others similarly situated,

Plaintiff,

vs.

INTERSTATE MANAGEMENT
COMPANY, L.L.C., a Limited Liability
Company; INTERSTATE HOTELS AND
RESORTS, INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00023535-CU-OE-CTL

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

Hearing Date: August 4, 2023
Hearing Time: 8:30 a.m.

Judge: Hon. Keri Katz
Dept: 74

Action Filed: May 27, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Guillermo Nunez and Eriberto Aquino (“Plaintiffs”) respectfully submit this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendants Interstate Management Company, LLC and Interstate Hotels and Resorts,
5 Inc. (“Defendants”), and seeks entry of an order: (1) preliminarily approving the proposed settlement
6 of this class action with Defendants; (2) for settlement purposes only, conditionally certifying the Class,
7 which is comprised of “all individuals who are or previously were employed by Defendants Interstate
8 Management Company, LLC; and Interstate Hotels and Resorts, Inc. in California who were classified
9 as hourly, non-exempt employees during the Class Period” of January 1, 2020 through January 31,
10 2023; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally
11 appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. DeBlouw, and
12 Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Armond M. Jackson.,
13 Andrea Fernandez-Jackson, and Anthony Filer Jr. of Jackson Law, APC as Class Counsel for the Class;
14 (5) approving the form and method for providing class-wide notice; (6) directing that notice of the
15 proposed settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and
16 (8) scheduling a final approval hearing date proposed for December 8, 2023 to consider Plaintiffs’
17 motion for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for
18 approval of attorneys’ fees and expenses. Plaintiffs and Defendants (collectively the “Parties”) have
19 reached a full and final settlement of the above-captioned action, which is set forth in the Class Action
20 and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the
21 fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
22 Nordrehaug”), served and filed herewith, and the form of the Agreement is the Los Angeles Superior
23 Court model form for class and PAGA settlements.

24 As consideration for this Settlement, the Gross Settlement Amount is Two Million Nine
25 Hundred Twenty Thousand Dollars (\$2,920,000) to be paid by Defendants, as set forth in the
26 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
27

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

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

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

\$2,920,000 (Gross Settlement Amount)

- \$20,000 (Plaintiffs' proposed service award not to exceed \$10,000)
- \$40,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$973,333.33 (Class Counsel Fees Payment - not to exceed amount)
- \$60,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$47,000 (Administration Expenses Payment - not to exceed amount)

\$1,779,666.67 (Net Settlement Amount)

Based upon 5,554 Class Members who collectively worked 100,000 pay periods, the Gross Settlement Amount provides a value of \$525 per Class Member and \$29.20 per pay period and the Net Settlement Amount provides an average recovery of \$320.42 per Class Member and a recovery of \$17.79 per pay period. Decl. Nordrehaug at ¶6.

On September 23, 2023, the Parties participated in an all-day mediation presided over by Louis Marlin, a respected and experienced mediator of wage and hour representative and class actions. Following this mediation, the Parties reached an agreement to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding executed in February 2023. Decl. Nordrehaug at ¶5. This Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Two Million Nine Hundred Twenty Thousand Dollars (\$2,920,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists

1 of the following elements: (1) payment of the Individual Class Payments to the Participating Class
2 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
3 Administration Expenses Payment; (4) the Class Representative Service Payments to Plaintiffs; and (5)
4 the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include
5 Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
6 with no reversion to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

7 Within thirty (30) days of the order granting final approval, Defendants shall deposit the Gross
8 Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class
9 Payments to Participating Class Members along with the other Court-approved distributions shall be
10 made by the Administrator within fourteen (14) days after Defendants fully fund the Gross Settlement
11 Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

12 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
13 amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
14 Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
15 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
16 Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement
17 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
18 dividing the Net Settlement Amount by the total number of Pay Periods worked by all Participating
19 Class Members during the Class Period and (b) multiplying the result by each Participating Class
20 Member's Pay Periods. (Agreement at ¶ 3.2(e).) Pay Periods will be based on Defendants' records;
21 however, Class Members will have the right to challenge the number of Pay Periods. Decl. Nordrehaug
22 at ¶17.

23 Class Members may choose to opt-out of the Settlement by following the directions in the Class
24 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
25 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
26 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
27 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
28 subject to the release of the Released PAGA Claims regardless of their request for exclusion.

1 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
2 to object to the Settlement and/or dispute their Pay Periods. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
3 Decl. Nordrehaug at ¶18.

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

10 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
11 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
12 administration in an amount not to exceed \$47,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

13 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
14 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
15 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
16 Litigation Expenses Payment in an amount not to exceed \$40,000. (Agreement at ¶ 3.2(b).) Subject
17 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs
18 as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

19 Subject to Court approval, Sixty Thousand Dollars (\$60,000) will be paid from the Gross
20 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
21 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
22 the PAGA Penalties shall be allocated as follows: 75% (\$45,000) shall be allocated to the Labor
23 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$15,000)
24 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
25 number of their respective PAGA Period Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
26 accompany proof of service, the LWDA has been served with this motion and the Agreement. Decl.
27 Nordrehaug at ¶22.

1 **III. CASE BACKGROUND**

2 The description of the case and claims, along with the procedural history, is set forth in the
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
4 exchange of documents and information in connection with the Action which permitted Class Counsel
5 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
6 in mediation on September 23, 2022 with Louis Marlin, which after arm's length negotiations, resulted
7 in this Settlement. Decl. Nordrehaug, ¶12.

8 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO**
9 **GRANT PRELIMINARY APPROVAL**

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

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

24 The primary question presented on an application for preliminary approval of a proposed class
25 action settlement is whether the proposed settlement is "within the range of possible approval."
26 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
27
28

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

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
23 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

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

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

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

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

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

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

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

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

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

9 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
10 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
11 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
12 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Armond Jackson at ¶¶ 8-10.

13 The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and
14 reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133
15 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity
16 of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement.");
17 *Dunk*, 48 Cal. App. 4th at 1802.

18 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
19 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
20 for the mediation, Defendants provided Class Counsel with necessary information for the members of
21 the Class, including time punch data, payroll data and information concerning the composition of the
22 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and
23 prepared and submitted a mediation brief and damage valuation to the Mediator. Following this all-day

24
25 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
26 Claims" are "all claims that were alleged, or reasonably could have been alleged, based on the facts,
27 circumstances, and primary rights asserted in the Operative Complaint which occurred during the Class
28 Period, and expressly excluding all other claims, including claims for vested benefits, Plaintiffs'
individual claims for retaliation, wrongful termination, violation of the Fair Employment and Housing
Act, unemployment insurance, disability, social security, workers' compensation, and California class
claims outside of the Class Period." (Agreement at ¶¶ 1.39 and 6.2.)

1 mediation, the Parties agreed to this Settlement. The final settlement terms were negotiated and set
2 forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly,
3 Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

4 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
5 is Two Million Nine Hundred Twenty Thousand Dollars (\$2,920,000). The Settlement is all-in with
6 no reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

3 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
4 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
5 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 5,554 Class
6 Members who collectively worked 100,000 pay periods (Agreement at ¶ 4.1), the Gross Settlement
7 Amount provides a value of \$525 per Class Member and \$29.20 per pay period and the Net Settlement
8 Amount provides an average recovery of \$320.42 per Class Member and a recovery of \$17.79 per pay
9 period. Decl. Nordrehaug, ¶6.

10 The calculations to compensate for the amount due to the Class Members at the time this
11 Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of
12 mediation. Class Counsel analyzed the data for putative class members and determined the potential
13 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
14 wages due to off the clock work was potentially \$4,377,709, the maximum value of the claim for
15 unpaid wages due to an alleged miscalculation of the regular rate was \$31,224, the maximum value of
16 the claim for unpaid wages due to the maximum potential damages for unpaid meal premiums were
17 estimated to be \$306,630 based upon an alleged 11% violation rate and after deducting the significant
18 meal period premiums paid by Defendants, the maximum potential rest period damages were estimated
19 to be \$1,673,146 based upon the same alleged 100% violation rate, and the maximum potential
20 damages for failure to provide expense reimbursement were calculated to be \$250,000. In total, the
21 damages for the Class were calculated to have a maximum potential total value of \$6,638,710. In
22 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
23 between \$5,369,305 and \$17,744,738, depending on the predicate violation, and the maximum value
24 of the potential wage statement penalties were \$8,687,100.⁴ Decl. Nordrehaug, ¶6.

25 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
27 asserted by Defendants, including, a good faith dispute defense as to whether any wages were owed
28 given Defendants' position that Plaintiffs were properly compensated. *See Nordstrom Commission*
Cases, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and
employee have a good faith dispute as to whether and when the wages were due.").

1 Consequently, the Gross Settlement Amount represents more than 43% of the potential
2 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
3 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
4 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
5 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
6 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
9 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
10 Defendants asserted that Defendants' practices complied with all applicable laws. Defendants argued
11 that all work time was paid for and that the regular rate was properly calculated. Defendants contended
12 that their meal and rest period policies fully complied with California law, that Defendants'
13 timekeeping system recorded meal periods, and that all meal periods were provided. Defendants' could
14 argue the significant meal period premiums paid was evidence of their legally compliance practices.
15 Further, Defendants argued that Defendants were not required to record rest periods. As to expenses
16 reimbursement, Defendants maintained that employees were not required to use their cell phones and
17 any use of their cell phone was voluntary for their convenience and therefore not subject to Labor Code
18 §2802. Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
19 *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy*
20 *Shops Inc.*, 64 Cal. App.5th 85 (2021), weakened Plaintiffs' claims, on liability, value, and class

21
22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

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

7 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
8 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
9 Defendants argued that the individual experience of each putative class member varied with respect to
10 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
11 by-case determinations that precluded class certification. Plaintiff is 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 \$2,920,000.00. 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
litigating an appeal. 'The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement.'

26 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
27 (9th Cir. 2000)).

28 **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 Plaintiff 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 pay periods 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 ¶ 3.2(a).) Plaintiffs
8 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. In support,
9 Plaintiffs' declarations address their work and service on behalf of the Class. For purposes of this
10 preliminary approval stage, the requested service award of \$10,000 is well within the accepted range
11 of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
12 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
13 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
14 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
15 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
16 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
17 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
18 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
19 representatives to compensate the employees for the time and effort expended on the case, for the risk
20 of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive
21 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 Defendants for the consideration and on the terms
7 set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in
8 light of all known facts and circumstances, including the risk of significant delay, defenses asserted by
9 Defendants, 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 a better position to evaluate the fairness of this Settlement because
22 Class Counsel obtained informal 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 Defendants.

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

26 Plaintiffs contends 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 are or previously were employed by Defendants Interstate
2 Management Company, LLC; and Interstate Hotels and Resorts, Inc. in California who
were classified as hourly, non-exempt employees during the Class Period.

3 (Agreement at ¶ 1.5.)

4 The “Class Period” is from January 1, 2020 through January 31, 2023. (Agreement at ¶ 1.13.)

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

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

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

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

14 While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
15 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
16 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
17 this settlement only. (Agreement at ¶ 2.10.)

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

19 Plaintiffs bring this Action on behalf of a Class of non-exempt, hourly employees who worked
20 for Defendants during the applicable Class Period. Plaintiffs assert that all of these individuals are
21 ascertainable because the class members can readily be determined through examination of Defendants’
22 files. Given that the Class consists of approximately 5,554 members, Plaintiffs maintain that
23 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10
24 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
25 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 5,554 individuals who
26 comprise the Class can be identified based on Defendants’ records and are sufficiently numerous for
27 class certification. Decl. 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, Plaintiff contends that common questions of law and fact are present, and specifically the
14 common questions of whether Defendants miscalculated the regular rate, whether Defendants failed
15 to pay wages for all time worked, whether the Defendants failed to provide meal and rest periods,
16 whether Defendants failed to provide required expense reimbursement, and whether Class Members
17 are entitled to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendants
18 dispute that common questions predominate but will not oppose such a finding for purposes of this
19 Settlement only.

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

21 The typicality requirement requires the Plaintiff to demonstrate that the members of the Class
22 have the same or similar claims as the Plaintiff. “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 this Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
28 satisfied. The Plaintiffs worked for Defendants as non-exempt, hourly employees during the Class

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

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

9 Plaintiffs contends that the Class Members are adequately represented here because Plaintiffs
10 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
11 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
12 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
13 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
14 counsel, provided documents to counsel and participated in the investigation and negotiations in the
15 Action. Second, Plaintiffs retained competent counsel who are experienced in employment class
16 actions and who have no conflicts. Decl. Nordrehaug at ¶ 31; Declaration of Armond Jackson at ¶¶ 8-
17 10. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both
18 the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.
19 Defendants dispute that the adequacy requirement is satisfied but will not oppose such a finding for
20 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 Defendants dispute that class treatment is superior, Defendants do 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. *7- Eleven Owners for*
9 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
10 upon procedures by which the Class Members will be provided with written notice of the Settlement
11 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
12 Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
13 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
14 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
15 current mailing address information available. (Agreement at ¶ 8.4(b).) The mailing will include a
16 Spanish translation of the Class Notice. (Agreement at ¶ 1.11.)

17 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
18 and to be approved by the Court, includes all relevant information. (*See Exhibit “A” to the Agreement.*)
19 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
20 impact on the rights of the Class Members if they do not opt out, including a description of the
21 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
22 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
23 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award
24 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

25 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
26 that the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit
27 an objection. (Agreement at ¶¶ 1.43, 8.5, 8.7.) Class Members shall be given the opportunity to object
28 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval

1 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
2 out will automatically receive a payment of their Individual Class Payment. This notice program was
3 designed to meaningfully reach the Class Members and it advises them of all pertinent information
4 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
5 satisfies the requirements of due process and is the best notice practicable under the circumstances and
6 complies with Rules of Court 3.766 and 3.769(f).

7 **VII. CONCLUSION**

8 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
9 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
10 fairness hearing for December 8, 2023, or as soon thereafter as is available for the Court.

11 Dated: July 11, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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