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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHRIS FARLEY, IRENE IMSON, SHELBY WARD, and DARLENE GRIFFITH, individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiff, vs. WAWANESA GENERAL INSURANCE COMPANY, a California Corporation; and DOES 1 through 50, inclusive, Defendants.	**Case No. <u>37-2021-00006007-CU-OE-CTL</u>** [Consolidated with Case No. 37-2021- 00047190-CU-OE-CTL] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** Hearing Date: December 1, 2023 Hearing Time: 8:30 a.m. Judge: Hon. Robert Longstreth Dept.: 65 Action Filed: February 9, 2021 Trial Date: Not set

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I. INTRODUCTION

Plaintiffs the Estate of Chris Farley, Shelby Ward, Darlene Griffith, and Irene Imson ("Plaintiffs") respectfully submit this memorandum in support of the unopposed motion for preliminary approval of the proposed class action settlement with Defendant Sharp Memorial Hospital ("Defendant"), and seek entry of an order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class, which is comprised of "all individuals who are or previously were employed by Defendant who were classified as non-exempt employees, excluding bargaining unit nurses, at any time during the Class Period" of February 9, 2017 through April 23, 2023; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Matthew J. Matern and Launa Adolph of Matern Law Group, PC as Class Counsel for the Class; (5) approving the form and method for providing class-wide notice; (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and (8) scheduling a final approval hearing date (proposed for April 26, 2024) to consider Plaintiffs' motion for final approval of the settlement and for approval of attorneys' fees and expenses. Plaintiffs and Defendant (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court.[1] A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug ("Decl. Nordrehaug"), served and filed herewith, and the form of the Agreement is based on the Los Angeles Superior Court model form for class and PAGA settlements.

As consideration for this Settlement, the Gross Settlement Amount is Four Million Sixty Thousand Dollars ($4,060,000) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the 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

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

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 Defendant. The Settlement is all-in with no reversion to Defendant 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:

$4,060,000 (Gross Settlement Amount)
- $40,000 (Plaintiffs' proposed service awards - not to exceed $10,000 each)
- $48,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- $1,353,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- $125,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- $60,000 (Administration Expenses Payment - not to exceed amount)

$2,433,667(Net Settlement Amount)

On January 23, 2023, the Parties participated in an all-day mediation session presided over by Tripper Ortman, Esq., a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties reached an agreement to settle the Actions based upon a mediator's proposal. Decl. Nordrehaug at ¶5. The 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, Plaintiffs respectfully request 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 Four Million Sixty Thousand Dollars ($4,060,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; (iv) the Class Representative Service Payments; and (v) the Administration Expenses Payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

The Agreement contains appropriate terms which have been previously approved by this Court and Courts throughout California. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class Notice also provides the required protections for the Class to opt out, object or dispute their workweeks.

(See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history, is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on January 23, 2023 with Tripper Ortman, Esq., which after arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

A. <u>The Role Of The Court In Preliminary Approval Of A Class Action Settlement</u>

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba, supra,* 91 Cal.App.4th at 234-235; *Dunk ,* 48 Cal.App.4th 1794. In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explained that, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624. Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases

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[2] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are 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).

such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminarily Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and therefore the presumption applies.

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement. The release applicable to the Class is appropriately tethered to allegations in the Action. (Agreement at ¶¶ 1.39, 6.2.)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Launa Adolf at ¶¶ 5-13. The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified 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 Tripper Ortman. 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. Plaintiffs 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, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

Class Counsel has conducted a thorough investigation into the facts of the class action as detailed in the Decl. Nordrehaug. Based on the Class 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. Plaintiffs and Class Counsel recognize the risks, expense and length of continuing to litigate and trying this Action against Defendant and then litigating possible appeals which could take several years. Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 6,444 estimated Class Members as of the time of mediation who collectively worked 428,302 Pay Periods at the time of mediation (Agreement at ¶4.1), the Gross Settlement Amount provides a value of $630 per Class Member and $9.47 per Pay Period and after deductions, the Net Settlement Amount provides an average recovery of $377.66 per Class Member and $5.68 per Pay Period. These figures will change slightly as the Class Period runs through April 23, 2023. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and determined the potential maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid wages based on the alleged regular rate miscalculation for meal period premiums and sick pay was $157,351, the maximum value of the claim for unpaid minimum and overtime wages due to alleged rounding practices was $1,717,608, the maximum potential unpaid meal period wages were estimated to be $23,279,949, the maximum potential rest period damages were estimated to be $15,192,523, and the maximum potential damages for failure to provide expense reimbursement were calculated to be $1,011,565. In total, the damages for the Class were calculated to have a maximum potential total value of $41,358,996. In addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were between $1,847,760 and $11,821,894 and the maximum value of the potential wage statement penalties were between $3,501,150 and $12,394,250, both ranges depending on the predicate violation giving rise to the penalty.[3] Defendant contends that these valuations grossly overstate the

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[3] While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class Members 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

damages (and therefore the resulting penalties) because they do not account for the fact that rounding overpaid employees and the existence of meal period waivers. Decl. Nordrehaug, ¶6.

Consequently, the Gross Settlement Amount represents more than 9.8% of the potential maximum damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.[4] The above maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.[5] Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all work time was properly recorded and paid for all time actually worked and that their neutral rounding actually overpaid the employees so that there were no unpaid wages. Defendant argues that there was no underpayment of wages due to the alleged miscalculation of the regular rate. Defendant at all times took the position that it correctly calculated and paid the regular rate for overtime, sick pay and premiums. Defendant contends that its meal and rest period policies fully complied with California law and Defendant did not fail to provide the opportunity for legally required meal and rest breaks. In addition, Defendant argued that Plaintiffs failed to consider that most of the

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dispute as to whether and when the wages were due.").

[4] Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

[5] *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) 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).

employees signed meal period waivers that are applicable to employees in the healthcare field who can waive one of their two meal periods, and/or otherwise waived their meal periods, that meal period premiums were automatically paid based on a facially non-compliant meal period based on an employee's waiver, and that employees could put into be paid a "no break" premium if not authorized and permitted to take a legally required break, and did so every pay period. Defendant could argue that its payment of significant meal period premiums was evidence of their lawful practices. As to expense reimbursement, Defendant contended that it did not fail to provide reimbursement for necessary business expenses and that claimed cellphone expenses were incurred voluntarily and/or for the convenience of employees and is therefore not required reimbursement. Defendant further provided evidence and argued that hospital phones were provided to employees to use in order for them to perform their job duties. Defendant argued that the decisions in *Brinker v. Superior Court,* 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that based on its facially lawful practices, it acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of $4,060,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely 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.'"

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

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

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

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

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

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel engaged in an investigation of the claims and conducted a review and analysis of the relevant documents and data. Class Counsel performed extensive discovery, which included the production of thousands of pages of documents and several depositions. Class Counsel was also experienced with the claims at issue here. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and 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 numerous potential appellate issues. Decl. Nordrehaug at ¶29.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

Plaintiffs contend that the proposed settlement meets all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the 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:

> All individuals who are or previously were employed by Defendant who were classified as non-exempt employees, excluding bargaining unit nurses, at any time during the

Class Period.

(Agreement at ¶ 1.5.)

The "Class Period" is from February 9, 2017 through April 23, 2023. (Agreement at ¶ 1.13.)

A. California Code of Civil Procedure § 382

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

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one 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 "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.

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

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

B. The Proposed Class Is Ascertainable and Numerous

Plaintiffs bring this Action on behalf of a Class of non-exempt employees who worked for Defendant during the applicable Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be determined through examination of Defendant's files. Given that the Class consists of approximately 6,444 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 6,444 individuals who comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

C. Common Issues of Law and Fact Predominate

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

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

Here, Plaintiffs contend that common questions of law and fact are present, and specifically the common questions of whether Defendant’s practices were lawful, whether Class Members were lawfully compensated for all hours worked, whether Defendant properly paid wages using the correct regular rate, whether the Defendant failed to provide all legally required meal and rest periods to class members, whether Defendant failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these practices. These common questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

In the Action, Plaintiffs contend that the typicality requirement is satisfied. The Plaintiffs worked for Defendant as non-exempt employees during the Class Period. Plaintiffs contend that, like every other member of the Class, they were subject to the same practices and policies of Defendant and were subject to the same defenses. Thus, Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same course of conduct by the Defendant, involve the same employment policies and practices of Defendant, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs maintain that the typicality requirement is met as to the common issues presented in this case. Defendant disputes typicality but Defendant does not oppose a finding of typicality for purposes of this Settlement only.

E. The Class Representatives Fairly and Adequately Protected the Class

Plaintiffs contends that the Class Members are adequately represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. First, Plaintiffs were aware of their duties as the Class representatives and have actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with counsel, provided documents to counsel and participated in the investigation and negotiations in the Action. Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31; Declaration of Launa Adolf at ¶¶ 5-13. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

The original Plaintiff, Chris Farley, recently passed away, and his financial claims in this matter are now being pursued by the Estate of Chris Farley. The Estate of Farley has the same interest in seeking monetary relief for these financial claims, no different than Chris Farley. During the pendency of the Chris Farley performed all duties of a class representative, including giving his testimony in a deposition. In light of this Chris Farley and now the Estate of Farley have represented and can continue to represent the interest if the Class in this Settlement, and are deservedly entitled to the service award for this work on behalf of the Class. Decl. Nordrehaug at ¶ 30(d).

F. The Superiority Requirement Is Met

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

> Absent class treatment, each individual plaintiff would present in separate, duplicative 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 to both the judicial system and the litigants.

Sav-On, 34 Cal. 4th at 340.

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

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to those approved and utilized in hundreds of class action settlements. The Class Notice includes all necessary information. (*See* Exhibit "A" to the Agreement.) Decl. Nordrehaug at ¶32. The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out), object, or submit disputes, which Response Deadline shall be extended in the event of a re-mailing. (Agreement at ¶¶ 1.43, 8.5(a), 8.7.) This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The Class Notice satisfies the requirements of due process, is the best notice practicable under the circumstances, and complies with Rules of Court 3.766 and 3.769(f).

VII. CONCLUSION

Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final approval hearing, which is proposed for April 26, 2024.

Dated: October 16, 2023

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