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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

MARIA ZAMBRANO and ALFONSO
PEREZ URIBE, individually, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiff,

vs.

TUDOR RANCH, INC., a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

CASE NO.: **CVRI2102436**

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

Hearing Date: January 30, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept: 1

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

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
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 Preliminarily Approval.....	7
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	7
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	9
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	13
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	14
A.	California Code of Civil Procedure §382.....	14
B.	The Proposed Class Is Ascertainable and Numerous	15
C.	Common Issues of Law and Fact Predominate.....	15
D.	The Claims of the Plaintiffs Are Typical of the Class Claims	16
E.	The Class Representation Fairly and Adequately Protected the Class	17
F.	The Superiority Requirement Is Met.....	17
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	18
VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page:</u>
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	15
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	11, 14
<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, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	12
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	11
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	6
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	5
<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. January 27, 2007)	12, 13
<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)	12, 16, 17
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	13
<i>In re Tableware Antitrust Litig.</i> , 484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)	9
<i>Kullar v. Foot Locker</i> , 168 Cal. App. 4th 116 (2008)	7, 8

1	<i>Linder v. Thrifty Oil Co.</i> ,	
2	23 Cal. 4th 429 (2003)	16
3	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
4	2008 WL 4473183 (S.D.Cal. Oct. 06, 2008)	13
5	<i>Ma v. Covidien Holding, Inc.</i> ,	
6	2014 WL 2472316, (C.D. Cal. 2014)	12
7	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
8	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	13
9	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
10	221 F.R.D. 523 (C.D. Cal. 2004)	7
11	<i>Nordstrom Comm'n Cases</i> ,	
12	186 Cal. App. 4th 576 (2010)	5, 10
13	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	
14	688 F.2d. 615 (9th Cir. 1982)	5, 6, 7
15	<i>Reaves v. Ketoro, Inc.</i> ,	
16	2020 U.S. Dist. Lexis 167926 (C.D. Cal. 2020)	17
17	<i>Rose v. City of Hayward</i> ,	
18	126 Cal.App.3d 926 (1981)	15
19	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
20	34 Cal. 4th 319 (2004)	15, 16, 18
21	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
22	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	6
23	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
24	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	12
25	<i>Tate v. Weyerhaeuser Co.</i> ,	
26	723 F.2d 598 (8th Cir. 1983)	16
27	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
28	97 F.3d 1227 (9th Cir. 1996)	17
	<i>Vasquez v. Superior Court</i> ,	
	4 Cal.3d 800 (1971)	6
	<i>Viceral v. Mistras Grp., Inc.</i> ,	
	2016 WL 5907869 (N.D. Cal. 2016)	12
	<i>Weinberger v. Kendrick</i> ,	
	698 F.2d 61 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983)	7
	<i>Wershba v. Apple Computer, Inc.</i> ,	
	91 Cal.App.4th 224 (2001)	6

1 **Statutes, Rules and Regulations:**

2 California Code of Civil Procedure §382 14, 15

3 California Labor Code §203 10

4 California Labor Code §226 10

5 California Labor Code §2698 4

6 California Labor Code §2699 4, 8

7 California Rules of Court, rule 3.766 19

8 California Rules of Court, rule 3.769 5, 19

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10 **Secondary Sources:**

11 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) 5, 6, 15

12 *Manual For Complex Litigation*, (Second), §30.44, 41.43 (1993). 5

13 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003) 6

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1 **I. INTRODUCTION**

2 Plaintiffs Maria Zambrano and Alfonso Uribe (“Plaintiffs”) respectfully submits this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendant Tudor Ranch, Inc. (“Defendant”), and seeks entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the following Class: “all individuals who are or
7 previously were employed by Defendant in California on a non-exempt basis at any time during the
8 Class Period”, which is May 27, 2017 to December 31, 2021; (3) provisionally appointing Plaintiffs as
9 the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle Nordrehaug,
10 and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the
11 Class; (5) approving the form and method for providing class-wide notice; (6) directing that notice of
12 the proposed settlement be given to the class; (7) appointing ILYM Group as Administrator, and
13 (8) scheduling a final approval hearing for the proposed date of June 11, 2024 to consider Plaintiffs’
14 motion for final approval of the settlement and for approval of attorneys' fees and litigation expenses.
15 Plaintiffs and Defendant (collectively the “Parties”) have reached a full and final settlement of the
16 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
17 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
18 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.
19 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a
20 class and PAGA settlement.

21 As consideration for this Settlement, the Gross Settlement Amount is Seven Hundred Thousand
22 Dollars (\$700,000) (the “Gross Settlement Amount”) to be paid by Defendant, as set forth in the
23 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
24 Parties and will be made in full and final settlement of the Released Class Claims in exchange for the
25 payments to Participating Class Members from the Net Settlement Amount, and includes (a) the costs
26 of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service
27

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

1 Payments, and (d) the PAGA Penalties payment to the LWDA and the Aggrieved Employees. The
2 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.
3 Nordrehaug at ¶3.

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

6 **\$700,000** (Gross Settlement Amount)

- 7 - \$20,000 (Plaintiffs' proposed service award not to exceed \$10,000 each)
- 8 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 9 - \$233,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$21,500 (Administration Expenses Payment - not to exceed amount)

9 **\$385,167** (Net Settlement Amount)

10 Based upon 1,955 Class Members who collectively worked 38,328 Workweeks (Agreement at ¶4.1),
11 the Gross Settlement Amount provides an average value of \$358 per Class Member and \$18 per
12 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$197.01
13 per Class Member and a recovery of \$10.04 per Workweek. Decl. Nordrehaug at ¶6.

14 On February 15, 2023, the Parties participated in an all-day mediation session presided over by
15 Tripper Ortman, a respected and experienced mediator of wage and hour class actions. Following the
16 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
17 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
18 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
19 substantial monetary payment, and there are significant litigation and class-certification risks.
20 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
21 and enter the proposed order submitted herewith.

22 **II. DESCRIPTION OF THE SETTLEMENT**

23 The Gross Settlement Amount is Seven Hundred Thousand Dollars (\$700,000). (Agreement
24 at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
25 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
26 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
27 the Class Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties payment.
28 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll

1 taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
2 Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

3 Within fourteen (14) days of the Effective Date, Defendant shall deposit the Gross Settlement
4 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
5 to Participating Class Members along with the other Court-approved distributions shall be made by the
6 Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount.
7 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

8 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
9 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
10 Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
11 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
12 Members as their Individual Class Payments. (Agreement at ¶¶ 1.23, 1.28 and 3.2.) From the Net
13 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
14 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by
15 all Participating Class Members during the Class Period and (b) multiplying the result by each
16 Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be based on
17 Defendant's records, however, Class Members will have the right to challenge the number of
18 Workweeks. Decl. Nordrehaug at ¶17.

19 Class Members may choose to opt-out of the Settlement by following the directions in the Class
20 Notice. (Agreement at ¶ 8.5, Ex. A.) The Class Notice Packet will include an Exclusion Form and an
21 Objection Form. (Agreement at ¶¶ 8.5(a), 8.7(b), Ex. A.) All Class Members who do not "opt out" will
22 be deemed Participating Class Members who will be bound by the Settlement and will be entitled to
23 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including
24 those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will
25 remain subject to the release of the Released PAGA Claims regardless of any request for exclusion.
26 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
27 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
28 Decl. Nordrehaug at ¶18.

1 A Participating Class Member must cash his or her Individual Class Payment check within 180
2 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
3 be voided and any funds from such uncashed checks will be sent to the California Controller's
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
5 to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.)
6 Class Members can then claim their funds through the Controller's website. The funds from uncashed
7 checks for Individual PAGA Payments will be handled in the same manner. (Agreement at ¶ 5.4.)
8 Decl. Nordrehaug at ¶19.

9 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
10 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
11 administration in an amount not to exceed \$21,500. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

12 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
13 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
14 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
15 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject
16 to Court approval, the Agreement provides for a payment of no more than \$10,000 to each of the
17 Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug
18 at ¶21.

19 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
20 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
21 *et seq.* ("PAGA"). The PAGA Penalties are \$15,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
22 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
23 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
24 penalties and and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
25 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set
26 forth in the accompany proof of service, the LWDA has been served with this motion and the
27 Agreement. Decl. 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 over more than two years which
5 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14.
6 The Parties participated in mediation on February 15, 2023 with Tripper Ortman, which after arms'
7 length negotiations during the mediation, resulted 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 California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits.
19 Preliminary approval is the first of three steps that comprise the approval procedure for settlements of
20 class actions. The second step is the dissemination of notice of the settlement to all class members.
21 The third step is a final settlement approval hearing, at which evidence and argument concerning the
22 fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be
23 heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996);
24 *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

1 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 to
18 voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's Federal*
19 *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 such
10 as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of
11 counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
12 523, 528 (C.D. Cal. 2004).

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

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

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

27 This settlement is the result of extensive and hard-fought litigation as well as negotiations before
28 an experienced and well-respected mediator. The negotiations have been, at all times, adversarial and

1 non-collusive in nature. Defendant has expressly denied and continues to deny any wrongdoing or legal
2 liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined
3 that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in
4 accordance with this Settlement.³

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

13 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
14 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
15 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
16 information regarding the Class Members, various internal documents, and other compensation and
17 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
18 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
19 terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl.
20 Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair,
21 reasonable and adequate. Class Counsel will be submitting this motion and the Agreement to the
22 LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2). Decl.

23
24 ³ The release applicable to the Class is appropriately tethered to allegations in the Action and the
25 "Released Class Claims" are narrowly defined as "all claims that were alleged, or reasonably could have
26 been alleged, based on the facts stated in the Operative Complaint which occurred during the Class
27 Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any
28 other claims, including claims for vested benefits, wrongful termination, violation of the Fair
Employment and Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period." (Agreement at ¶¶ 1.38 and
6.2.)

1 Nordrehaug at ¶38.

2 Class Counsel conducted an investigation into the facts of the class action. Class Counsel
3 engaged in a thorough review and analysis of the relevant documents and data with the assistance of
4 an expert. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient
5 information to make an informed judgment regarding the likelihood of success on the merits and the
6 results that could be obtained through further litigation. In addition, Class Counsel previously
7 negotiated settlements with other employers in actions involving nearly identical issues and analogous
8 defenses. Based on the foregoing data and their own independent investigation, evaluation and
9 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
10 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
11 facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
12 potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

20 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
21 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
22 zealously advocated their positions. Accordingly, there is likewise every reason to conclude that
23 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
24 influence.

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

27 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
28 possible approval. All Class Members will receive an opportunity to participate in the Settlement and

1 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,955 Class
2 Members who collectively worked 38,328 Workweeks (Agreement at ¶4.1), the Gross Settlement
3 Amount provides an average value of \$358 per Class Member and \$18 per Workweek and after
4 deductions the Net Settlement Amount provides an average recovery of \$197.01 per Class Member and
5 a recovery of \$10.04 per Workweek. This means that a Class Member who worked the entire Class
6 Period (240 weeks) will have a net recovery of \$2,409.60, and a Class Member who worked only a
7 single week in the Class Period will have a net recovery of \$10.04. Decl. Nordrehaug, ¶6.

8 The calculations to compensate for the amount due for the Class at the time of the mediation
9 were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at
10 issue in this Action, Plaintiffs used this expert to analyze the data and determine the potential unpaid
11 wages for the employees. The maximum potential damages were calculated to be less than \$2,000 for
12 the alleged miscalculation of the rest period compensation for piece-rate work, \$787,500 for the
13 potential unpaid wages due to alleged off-the-clock work of 1 hour per week, \$525,000 for alleged
14 missed meal period damages based upon 20% violation rate for all shifts, \$525,000 for alleged missed
15 rest period damages based upon the same 20% violation rate for all shifts, \$43,750 for alleged
16 unreimbursed business expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6.
17 As a result, the total damage valuation was calculated that Defendant was subject to a maximum
18 damage claim in the amount of \$1,883,250. As to potential statutory penalties, Plaintiffs calculated that
19 potential waiting time penalties were a maximum of \$8,434,800, and the potential wage statement
20 penalties were a maximum of \$1,342,300.⁴ However, these maximum penalty calculations assumed
21 that every terminated Class Member was entitled to penalties when the majority were seasonal
22 employees who may not have worked sufficient pay periods to have experienced unpaid wages. The
23 valuations and reductions in the realistic value of the claims are discussed more fully in paragraph 6 of
24

25 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
26 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
27 by Defendants, including, a good faith dispute defense as to whether any wages were owed given
28 Defendants' position that Plaintiff were properly compensated and classified. *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 the Decl. Nordrehaug. Defendant vigorously disputed Plaintiffs' calculations and exposure theories.

2
3 A number of defenses asserted by Defendant, however, present serious threats to the claims of
4 the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied
5 with all applicable Labor laws. Defendant argued that Class Members were properly paid for all time
6 worked and that all work time was properly recorded. Defendants contend that their meal and rest
7 period policies fully complied with California law and Defendant did not fail to provide the opportunity
8 for legally required meal and rest breaks. The records also showed that any underpayment of rest
9 periods for piece-rate work that may have occurred was only a few cents per pay period and may have
10 occurred in only about 2% of pay periods. Defendant contended that there was no failure to pay for
11 business expenses and any cell phone usage was merely convenient and voluntary such that
12 reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court
13 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability,
14 value, and class certifiability as to the meal and rest period claims. Defendant also argues that based
15 on its facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted
16 would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful,
17 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
18 believe that these defenses could be overcome, Defendant maintains these defenses have merit and
19 therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

20 In addition, there was also a significant risk that, if the Action was not settled, Plaintiffs would
21 be unable to obtain a certified class and maintain the certified class through trial, and thereby not
22 recover on behalf of any employees other than themselves. At the time of the mediation, Defendant
23 forcefully opposed the propriety of class certification, arguing that individual issues precluded class
24 certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank*
25 *National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery
26 even where the class has been certified. While other cases have approved class certification in wage
27 and hour claims, class certification in this action was hotly disputed and the maintenance of a certified
28 class through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

1 In light of these uncertainties, the Gross Settlement Amount of \$700,000 is fair and reasonable.
2 This amount represents more than 37% of the maximum value of the alleged damages at issue in this
3 case at the time this Settlement was negotiated.⁵ In addition, the above maximum calculations should
4 then be adjusted in consideration for both the risk of class certification and the risk of establishing class-
5 wide liability on all claims. Given the amount of the settlement as compared to the potential value of
6 claims in this case and the defenses asserted by Defendant, this settlement is fair and reasonable.⁶
7 Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

8 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
9 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). After arm's length negotiations between
10 experienced and informed counsel, the Parties recognized the potential risks and agreed on the
11 Settlement with a Gross Settlement Amount of \$700,000. As the Court held in *Glass*, where the parties
12 faced uncertainties similar to those here:

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

19 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
20 (9th Cir. 2000)).

21 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
22 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
23 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

24 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
28 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of
a class settlement which represented "roughly one-sixth of the potential recovery".) See also *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 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 maximum valuation).

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

3 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
4 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
5 Members are all determined under a neutral methodology. Each Participating Class Member will
6 receive the same opportunity to participate in and receive payment through a neutral formula that is
7 based upon the Workweeks for that individual. (Agreement at ¶ 3.2(e).) Decl. Nordrehaug, ¶4.

8 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
9 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
10 performed their duties admirably by working with Class Counsel for two years. The Declarations of
11 the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested
12 service award of \$10,000 is well within the accepted range of awards for purposes of preliminary
13 approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
14 (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian Info.*
15 *Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award
16 where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
17 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
18 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
19 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
20 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
21 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
22 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
23 all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

15 Certification is appropriate when the moving party has demonstrated the existence of an
16 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
17 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). Plaintiffs contend that the proposed
18 settlement meet all of the requirements for class certification under California Code of Civil Procedure
19 § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined
20 in the Agreement. This Court should conditionally certify the Class for settlement purposes only,
21 defined as follows:

22 All individuals who are or previously were employed by Defendant in California on a
23 non-exempt basis at any time during the Class Period.

24 (Agreement at ¶ 1.5.)

25 The Class Period is from May 27, 2017 to December 31, 2021. (Agreement at ¶ 1.13.)

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

27 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil
28

1 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
2 class certification is appropriate as follows:

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

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

12 Defendant does not dispute, for settlement purposes only, that all of the elements for class
13 certification are met here. Defendant does not concede that certification is appropriate outside of this
14 Settlement and preserves all rights to oppose certification if, for any reason, the settlement does not
15 become effective. While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these
16 requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied
17 in this case for purposes of settlement only and therefore, the proposed Class should be certified for
18 purposes of settlement only. (Agreement at ¶ 2.7.)

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

20 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
21 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
22 members can readily be determined through examination of Defendant’s files. Given that the Class
23 consists of 1,955 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
24 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
25 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
26 Here, Plaintiffs assert that the 1,955 current and former employees that comprise the Class can be
27 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.
28 Nordrehaug at ¶30.

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*

1 on *Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
2 necessity for class members to individually establish eligibility and damages does not mean individual
3 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

4 Commonality exists if there is a predominant common legal question regarding how an
5 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
6 1536 (2008) (“[T]he common legal question remains the overall impact of Diva’s policies on its
7 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
8 certification stage since the question is “essentially a procedural one that does not ask whether an action
9 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

10 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
11 common questions of whether Defendant’s employment practices were lawful, whether Class members
12 were lawfully compensated for all hours worked, whether Defendant failed to provide meal and rest
13 periods to Class Members, whether Defendant failed to provide required expense reimbursement, and
14 whether Class Members are entitled to damages and penalties as a result of these practices. Plaintiffs
15 contend that certification of this Class is appropriate because Defendant allegedly engaged in uniform
16 practices with respect to the Class Members. As a result, these common questions of liability could be
17 answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions
18 predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

26 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
27 every other member of the Class, were employed by Defendant as a non-exempt employee during the
28 Class Period, and, like every other member of the Class, was subject to the same employment practices.

1 Plaintiffs, like every other member of the Class, also claims owed compensation as a result of the
2 Defendant's uniform company policies and practices. Thus, the claims of Plaintiffs and the members
3 of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based
4 on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert that
5 the typicality requirement is met as to the common issues presented in this case. Defendant does not
6 oppose a finding of typicality for purposes of this Settlement only.

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

8 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and
9 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
10 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
11 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
12 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
13 Class Counsel, provided documents and information to Class Counsel, and participated in the
14 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to
15 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
16 competent counsel who are experienced in employment class actions and who have no conflicts. Decl.
17 Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiffs and those of
18 the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts
19 and legal theories. Under such circumstances, there can be no conflicts of interest, and adequacy of
20 representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020).
21 Defendants dispute that the adequacy requirement is satisfied but will not oppose such a finding for
22 purposes of this Settlement only.

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

24 To certify a class, the Court must also determine that a class action is superior to other available
25 methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of
26 common issues will reduce litigation costs and promote greater efficiency, a class action may be
27 superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
28 1996). As courts have previously observed:

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

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

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

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

12 The Court has broad discretion in approving a practical notice program. The Parties have agreed
13 upon procedures by which the Class Members will be provided with written notice of the Settlement
14 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
15 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
16 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
17 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
18 current mailing address information available. (Agreement at ¶ 8.4(b).)

19 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
20 and to be approved by the Court, includes all relevant information. (*See Exhibit “A”* to the Agreement.)
21 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
22 impact on the rights of the Class Members if they do not opt out, including a description of the
23 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
24 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
25 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award
26 request; and (vi) the anticipated expenses of the Administrator. An Objection form and a Request for
27 Exclusion form will accompany the Class Notice, the forms of which are part of Exhibit A to the
28 Agreement. The Class Notice Packet will include a Spanish translation. (Agreement at ¶ 1.11.) Decl.
Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have sixty (60) days from the date that

1 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit a
2 written objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) In the event of a re-mailing, the Response Deadline
3 will be extended by an additional 14 days. (Id.) Class Members shall be given the opportunity to object
4 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
5 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
6 out will automatically receive a payment of their Individual Class Payment. This notice program was
7 designed to meaningfully reach the Class Members and it advises them of all pertinent information
8 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
9 satisfies the requirements of due process and is the best notice practicable under the circumstances and
10 complies with Rules of Court 3.766 and 3.769(f).

11 **VII. CONCLUSION**

12 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
13 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
14 approval hearing for the proposed date of June 11, 2024, which date is at least one hundred twenty (120)
15 days from the date of Preliminary Approval.

16 Dated: January 3, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq.
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