

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

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

14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 JASON TAAD an individual, on behalf of
16 himself and on behalf of all persons similarly
17 situated,

18 Plaintiffs,

19 vs.

20 BIGGE CRANE AND RIGGING CO., a
21 California Corporation; and DOES 1 through
22 50, inclusive,

23 Defendants.

CASE NO.: **RG21103112**

[Consolidated with Case No. RG21103123]

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

Hearing Date: May 30, 2024

Hearing Time: 3:30 p.m.

Reservation ID: A-21103112-001

Judge: Hon. Frank Roesch

Dept.: 17

Action Filed: June 29, 2021

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Jason Taad (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Bigge Crane and Rigging Co. (“Defendant”), and seeks entry of an order: (1) preliminarily approving
5 the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “all individuals who are or previously
7 were employed by Defendant who were classified as a non-exempt employee and worked for
8 Defendant as a Teamsters member or a non-union employee in the State of California at any
9 time during the Class Period”, which is June 29, 2017 through April 25, 2024; (3) provisionally
10 appointing Plaintiff as the representative of the Class; (4) provisionally appointing Norman B.
11 Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman,
12 Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP as
13 Class Counsel; (5) approving the form and method for providing class-wide notice; (6) directing
14 that notice of the proposed settlement be given to the class; (7) appointing Apex Class Action,
15 LLC as Administrator, and (8) scheduling a final approval hearing date, proposed for October
16 10, 2024, which is at least 120 days from preliminary approval, to consider Plaintiff’s motion
17 for final approval of the settlement and for approval of attorneys’ fees and expenses. Plaintiff
18 and Defendant (collectively the “Parties”) have reached a full and final settlement of the
19 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
20 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
21 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.
22 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a
23 class and PAGA settlement.

24 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Seven
25 Hundred Seventy-Five Thousand Dollars (\$775,000) (the “Gross Settlement Amount”) is to be paid by
26 Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
27 _____

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

1 in the Action between the Parties and will be made in full and final settlement of the Released Class
2 Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount,
3 and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class
4 Representative Service Payment, and (d) the PAGA Penalties payment allocated 75% to the LWDA
5 and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3.

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

8 **\$775,000** (Gross Settlement Amount)

- 9 - \$15,000 (Plaintiff's proposed service award not to exceed \$15,000)
10 - \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
11 - \$258,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
12 - \$80,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
13 - \$8,000 (Administration Expenses Payment - not to exceed amount)

14 **\$383,667** (Net Settlement Amount)

15 Based upon 222 Class Members who collectively worked 27,000 Workweeks (Agreement at ¶ 4.1), the
16 Gross Settlement Amount provides an average value of \$3,490 per Class Member and \$28 per
17 Workweek and after deductions the Net Settlement Amount provides an average recovery of \$1,728.22
18 per Class Member and a recovery of \$14.20 per Workweek. Decl. Nordrehaug at ¶6.

19 On January 24, 2024, the Parties participated in an all-day mediation session presided over by
20 Tripper Ortman, a respected and experienced mediator of wage and hour class actions. Following the
21 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
22 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
23 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
24 substantial monetary payment, and there are significant litigation and class-certification risks.
25 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
26 and enter the proposed order submitted herewith.

27 **II. DESCRIPTION OF THE SETTLEMENT**

28 The Gross Settlement Amount is Seven Hundred Seventy-Five Thousand Dollars (\$775,000).
(Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses

1 Payment; (4) the Class Representative Service Payment to the Plaintiff; and (5) the PAGA Penalties
2 payment which is allocated between the LWDA PAGA Payment and the Individual PAGA Payments.
3 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll
4 taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
5 Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

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

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

22 Class Members may choose to opt-out of the Settlement by following the directions in the Class
23 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
24 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
25 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
26 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
27 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
28 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right

1 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
2 Decl. Nordrehaug at ¶18.

3 A Participating Class Member must cash his or her Individual Class Payment check within 180
4 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
5 be voided and any funds represented by such checks sent to Court-approved nonprofit organization or
6 foundation consistent with Code of Civil Procedure Section 384(b) ("Cy Pres Recipient"). The Parties
7 designate the following two cy pres recipients in 50% allocations each: (1) The Operating Engineers
8 Local #3 Scholarship Fund and (2) The Cypress Mandela Training Center in Oakland, California.
9 (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

10 Subject to Court approval, the Parties have agreed on Apex Class Action LLC to administer the
11 settlement in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
12 settlement administration in an amount not to exceed \$8,000. (Agreement at ¶ 3.2(c).) Apex provided
13 an estimate of \$6,890 for administration expenses. Decl. Nordrehaug at ¶20.

14 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
15 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
16 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
17 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ 3.2(b).) Subject
18 to Court approval, the Agreement provides for a payment of no more than \$15,000 to the Plaintiff as
19 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

20 Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount
21 for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698,
22 *et seq.* ("PAGA"). The PAGA Penalties are \$80,000. (Agreement at ¶¶ 1.34 and 3.2(d).) Pursuant to
23 the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows:
24 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil
25 penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved
26 Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As
27 set forth in the accompanying proof of service, the LWDA has been served with this motion and the
28 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 for more than two years which
5 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
6 14. The Parties participated in mediation on January 24, 2024 with Tripper Ortman, which, after arms'
7 length negotiations through this 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 California "[p]ublic policy generally favors the compromise of complex class action litigation."
11 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
12 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
13 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
14 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
15 denied, 459 U.S. 1217 (1983)).

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

22 The primary question presented on an application for preliminary approval of a proposed class
23 action settlement is whether the proposed settlement is "within the range of possible approval."
24 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
25 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed

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*

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

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

12 The approval of a proposed settlement of a class action suit is a matter within the broad
13 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
14 In considering a potential settlement for preliminary approval purposes, the trial court does not have
15 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
16 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
17 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
18 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.
19 Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical or
20 speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*, 688
21 F.2d at 625, 628.

22 With regard to class action settlements, the opinions of counsel should be given considerable
23 weight both because of counsel’s familiarity with this litigation and previous experience with cases
24 such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation
25 of counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
26 F.R.D. 523, 528 (C.D. Cal. 2004).

27 _____
28 *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

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

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

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

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

20 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
21 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
22 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar

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

1 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
2 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
3 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
4 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
5 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

6 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
7 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
8 for the mediation, Defendant provided Class Counsel with payroll and employment data and other
9 information regarding the Class Members, various internal documents, and other compensation and
10 employment-related materials. Class Counsel analyzed the data with the assistance of damages expert
11 Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement
12 terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl.
13 Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair,
14 reasonable and adequate.

15 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
16 Seven Hundred Seventy-Five Thousand Dollars (\$775,000). The Settlement is all-in with no reversion
17 to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

18 Class Counsel has conducted an investigation into the facts of the class action. Both formal and
19 informal discovery was obtained, which included the production of thousands of pages of relevant
20 documents. Class Counsel engaged in a thorough review and analysis of the relevant documents and
21 data with the assistance of an expert. Accordingly, the agreement to settle did not occur until Class
22 Counsel possessed sufficient information to make an informed judgment regarding the likelihood of
23 success on the merits and the results that could be obtained through further litigation. In addition, Class
24 Counsel previously negotiated settlements with other employers in actions involving nearly identical
25 issues and analogous defenses. Based on the foregoing data and their own independent investigation,
26 evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set
27 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
28 of all known facts and circumstances, including the risk of significant delay, defenses asserted by

1 Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

16 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
17 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
18 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 222 Class
19 Members who collectively worked 27,000 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
20 Amount provides an average value of \$3,490 per Class Member and \$28 per Workweek and after
21 deductions the Net Settlement Amount provides an average recovery of \$1,728.22 per Class Member
22 and a recovery of \$14.20 per Workweek. Decl. Nordrehaug, ¶6.

23 The calculations to compensate for the amount due for the Class at the time of the mediation
24 were calculated by Berger Consulting, Plaintiff’s damage expert. As to the Class whose claims are at
25 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
26 wages for the employees. The maximum potential damages were calculated to be \$134,924 for unpaid
27 overtime, \$2,084,905 for the alleged unpaid wages due to off-the-clock work at 1 hour per week, \$7,994
28 for the alleged unpaid wages due to the regular rate miscalculation, \$888 for the alleged underpaid meal

1 premiums and sick pay, \$814,085 for alleged meal period damages based upon a 14.6% potential
2 violation rate for shifts worked and after deducting the meal premiums actually paid by Defendant,
3 \$800,512 for alleged rest period damages based upon the same potential 14.6% violation rate observed
4 for meal periods, \$43,522 for alleged unreimbursed business expenses for personal cell phone usage
5 at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage valuation was calculated that
6 Defendant was subject to a maximum damage claim in the amount of \$3,886,830. As to potential
7 penalties, Plaintiffs calculated that potential waiting time penalties were a maximum of between
8 \$1,230,766 and \$2,541,519, depending on the predicate violation giving rise to the penalty, and
9 potential maximum wage statement penalties were \$443,529.⁴ Defendant vigorously disputed
10 Plaintiff's calculations and exposure theories. Decl. Nordrehaug, ¶6.

11 Consequently, the Gross Settlement Amount of \$775,000 represents approximately 20% of the
12 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁵
13 The above maximum calculations should then be adjusted in consideration for both the risk of class
14 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
15 settlement as compared to the potential value of claims in this case and the defenses asserted by
16 Defendant, this settlement is fair and reasonable.⁶ Clearly, the goal of this litigation has been met.

17
18 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
19 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
20 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
21 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
dispute as to whether and when the wages were due.").

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

25 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
26 settlement where the settlement amount constituted approximately 25% of the estimated overtime
27 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
28 (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."); *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*

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 Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that Class Members were properly paid for all time worked, including overtime, and that all work time was properly recorded. Defendant argued there was no miscalculation of the regular rate when paying wages and no underpayment meal premiums and sick pay. 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. Defendant could argue that its payment of meal period premiums is evidence of lawful practices. Defendant contends that there was no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary such that reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's 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, Defendant 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 Plaintiff believes 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, Plaintiff would be unable to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any employees other than himself. At the time of the mediation, Defendant forcefully opposed the propriety of class certification, arguing that individual issues precluded class certification.

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 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
2 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even
3 where the class has been certified. While other cases have approved class certification in wage and
4 hour claims, class certification in this action was hotly disputed and the maintenance of a certified class
5 through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

6 After arm's length negotiations between experienced and informed counsel, the Parties
7 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
8 \$775,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

15 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
16 (9th Cir. 2000)).

17 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 18 **Class Representatives or Segments Of The Class**

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

24 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
25 his service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
26 performed his duties admirably by working with Class Counsel over the course of litigation. The
27 Declaration of the Plaintiff is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
28 the requested service award is well within the accepted range of awards for purposes of preliminary
approval. See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11
(C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds*
v. Direct Flow Med., Inc., 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request

1 for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
2 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
3 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
4 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
5 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award in overtime class action); *Glass*
6 *v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in
7 overtime class action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards
8 are routinely awarded to class representatives to compensate the employees for the time and effort
9 expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there
10 from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862
11 at *16-17.

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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 began investigating the Class Members' claims before the Action were filed, and during the course of litigation, Class Counsel engaged in informal discovery to obtain necessary information. Class Counsel conducted a review and analysis of the relevant documents and data. Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions. 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. There can be no doubt that Class Counsel

1 possessed sufficient information to make an informed judgment regarding the likelihood of success on
2 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶29.

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

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

8 All individuals who are or previously were employed by Defendant who were classified
9 as a non-exempt employee and worked for Defendant as a Teamsters member or a
non-union employee in the State of California at any time during the Class Period.

10 (Agreement at ¶ 1.5.)

11 The Class Period is June 29, 2017 through April 25, 2024. (Agreement at ¶ 1.13.)

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

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

16 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
17 of a common or general interest, of many persons, or when the parties are numerous,
and it is impracticable to bring them all before the court....” The party seeking
18 certification has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The
19 “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.

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

21 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
22 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
23 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
24 settlement only. (Agreement at ¶ 2.12.)

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

26 Plaintiff brings this action on behalf of a Class of non-exempt employees of Defendant during
27 the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
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1 members can readily be determined through examination of Defendant's files. Given that the Class
2 consists of 222 individuals, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
3 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
4 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
5 Here, Plaintiff asserts that the 222 current and former employees that comprise the Class can be
6 identified based on Defendant's records and are sufficiently numerous for class certification. Decl.
7 Nordrehaug at ¶30.

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

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

14 Commonality exists if there is a predominant common legal question regarding how an
15 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
16 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
17 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
18 certification stage since the question is "essentially a procedural one that does not ask whether an action
19 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

20 Here, Plaintiff contends that common questions of law and fact are present, specifically the
21 common questions of whether Defendant's employment practices were lawful, whether Defendant
22 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
23 compensated for all hours worked, whether Defendant correctly calculated the regular rate, whether
24 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
25 to damages and penalties as a result of these practices. Plaintiff contends that certification of this Class
26 is appropriate because Defendant allegedly engaged in uniform practices with respect to the Class
27 Members. As a result, these common questions of liability could be answered on a class wide basis.
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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 Plaintiff Are Typical of the Class Claims

The typicality requirement requires the Plaintiff to demonstrate that the members of the class have the same or similar claims as the Plaintiff. “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 this Action, Plaintiff contend that the typicality requirement is fully satisfied. Plaintiff, like every other member of the Class, was employed by Defendant as a non-exempt employee, and, like every other member of the Class, were subject to the same employment practices. Plaintiff, like every other member of the Class, also claims owed compensation as a result of the Defendant’s uniform company policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality requirement is met as to the common issues presented in this case. Defendant does not oppose a finding of typicality for purposes of this Settlement only.

E. The Class Representation Fairly and Adequately Protected the Class

Plaintiff contends that the Class Members are adequately represented here because Plaintiff 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. This requirement is met here. First, Plaintiff is well aware of his duties as the representative of the Class and has actively participated in the prosecution of this case to date. Plaintiff effectively communicated with Class Counsel, provided documents and information to Class Counsel, and participated in the investigation and resolution of the Action. The personal involvement of the Plaintiff was essential to the prosecution of the Action and the monetary settlement reached. Second, Plaintiff retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31.

1 Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the
2 Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.
3 Under such circumstances, there can be no conflicts of interest, and adequacy of representation is
4 satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant
5 disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of
6 this Settlement only.

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

8 To certify a class, the Court must also determine that a class action is superior to other available
9 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
10 common issues will reduce litigation costs and promote greater efficiency, a class action may be
11 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
12 1996). As courts have previously observed:

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

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

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

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

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

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

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

19 VII. CONCLUSION

20 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
21 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
22 approval hearing for the proposed date of October 3, 2024, which date is at least one hundred twenty
23 (120) days from the date of Preliminary Approval.

24 Dated: May 3, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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