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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KINGS**

ADRIAN LEON and RICHARD
RODRIGUEZ, JR., on behalf of themselves
and on behalf of all persons similarly
situated,

Plaintiff,

vs.

CALAVERAS MATERIALS, INC., a
California Corporation; LEHIGH HANSON
SERVICES LLC, a Limited Liability
Company; SOUTH VALLEY
MATERIALS, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **21C-0105**
[Consolidated for All Purposes with
Case No. 21C-0167]

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

Hearing Date: October 20, 2022
Hearing Time: 10:30 a.m.

Dept: 7
Judge: Hon. Melissa D'Morias

Action Filed: April 5, 2021
Trial Date: None set

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1 **I. INTRODUCTION**

2 Plaintiffs Adrian Leon and Richard Rodriguez, Jr. (“Plaintiffs”) respectfully submit this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendants Calaveras Materials, LLC (formerly known as Calaveras Materials, Inc.),
5 Lehigh Hanson Services LLC, and South Valley Materials, LLC (formerly known as South Valley
6 Materials, Inc.) (collectively “Defendants”), and seek entry of an order: (1) preliminarily approving the
7 proposed settlement of this class action with Defendants; (2) for settlement purposes only, conditionally
8 certifying the Class, which is comprised of “all individuals who are or previously were employed by
9 Defendant Lehigh Hanson Services, LLC in California who were classified as hourly-paid or
10 non-exempt employees during the Class Period, and excluding any members of the settlement classes
11 in the cases of *Avelar v. Hanson Aggregates, LLC*, Superior Court of California, County of Los
12 Angeles, Case No. 19STCV32068 (“Avelar Action”); and *Rost v. Lehigh Hanson, Inc.*, Superior Court
13 of the State of California, County of San Luis Obispo, Case No. 20CV-0225 (“Rost Action”); (3)
14 provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing
15 Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, and Jeffrey
16 S. Herman of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)
17 approving the form and method for providing class-wide notice; (6) directing that notice of the
18 proposed settlement be given to the class; (7) appointing ILYM Group as Settlement Administrator,
19 and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion for final approval of the
20 settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys' fees and
21 expenses.

22 Plaintiffs and Defendants (collectively the “Parties”) have reached a full and final settlement
23 of the above-captioned consolidated actions, which is embodied in the Class Action Settlement
24 Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement
25 is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed
26 herewith.

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

1 As consideration for this Settlement, the Gross Settlement Amount is Two Million Five
2 Hundred Thousand Dollars (\$2,500,000) to be paid by Lehigh Hanson Services, LLC , as set forth in
3 the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
4 Parties and will be made in full and final settlement of the Released Class Claims. The Gross
5 Settlement Amount includes all payments of Settlement Shares to the Participating Class Members,
6 Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses
7 Payment, Class Representative Service Payments to Plaintiffs, and the PAGA Payment. The Gross
8 Settlement Amount does not include the employer's share of payroll taxes which will be separately paid
9 by Lehigh Hanson Services, LLC. The Settlement is all-in with no reversion to Defendants and no need
10 to submit a claim form. Decl. Nordrehaug at ¶3.

11 On March 14, 2022, the Parties participated in an all-day mediation presided over by Hon. Carl
12 J. West (Ret.), a respected mediator of wage and hour representative and class actions. While the
13 Parties were not able to reach a settlement at the mediation, following the mediation, each side,
14 represented by its respective counsel, were able to agree to settle the Action based upon a mediator's
15 proposal which was memorialized in a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
16 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
17 substantial monetary payment, and there are substantial litigation and class-certification risks.
18 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
19 and enter the proposed order submitted herewith.

20 **II. DESCRIPTION OF THE SETTLEMENT**

21 The Gross Settlement Amount that Lehigh Hanson Services, LLC will pay under this Settlement
22 is Two Million Five Hundred Thousand Dollars (\$2,500,000). (Agreement at ¶ I(19).) Under the
23 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
24 Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses
25 Payment; (3) Settlement Administration Expenses; (4) Class Representative Service Payments to the
26 Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶ I(19).) The Gross Settlement Amount does
27 not include the employer's share of payroll taxes. (Agreement at ¶ III(38).) The Gross Settlement
28 Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ III(38).) Decl. Nordrehaug

1 at ¶15.

2 Lehigh Hanson Services, LLC shall fund the Gross Settlement Amount and the amount
3 necessary to pay Defendant's share of payroll taxes within fifteen (15) calendar days of the Effective
4 Date. (Agreement at ¶ III(46).) The Settlement Shares to Participating Class Members will be mailed
5 by the Settlement Administrator within fifteen (15) calendar days after the funding of the Gross
6 Settlement Amount. (Agreement at ¶ III(46).) Decl. Nordrehaug at ¶16.

7 The Net Settlement Amount shall equal the net amount available for payment to the Class after
8 deducting the Court-approved amounts for the Class Representative Service Payments, the Class
9 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the
10 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be
11 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
12 ("Participating Class Members"). (Agreement at ¶¶ I(24) and III(41).) The Settlement Share will be
13 calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the
14 total number of weeks worked for Lehigh Hanson Services, LLC included in the dates of employment
15 to determine a dollar amount per week ("Weekly Rate"); and (b) the Settlement Administrator shall then
16 take the number of weeks worked by each Participating Class Member for Lehigh Hanson Services,
17 LLC and multiply it by the Weekly Rate to calculate their Settlement Share. (Agreement at ¶
18 III(40)(b).) Workweeks will be based on Defendants' records, however, Class Members will have the
19 right to challenge the number of workweeks. Decl. Nordrehaug at ¶17.

20 Class Members may choose to opt-out of the Settlement by following the directions in the Class
21 Notice. (Agreement at ¶ III(42)(c)(iii) and Ex. A.) All Class Members who do not "opt out" will be
22 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
23 receive a Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their
24 allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims,
25 regardless of their request for exclusion. (Agreement at ¶ III(42)(c)(iii).) Finally, the Class Notice will
26 also advise the Class Members of their right to object to the Settlement and/or dispute their workweeks.
27 (Agreement at ¶ III(42)(c)(i)-(ii), Ex. A.) Decl. Nordrehaug at ¶18.

28 A Participating Class Member must cash a Settlement Share check within 180 days after it is

1 mailed. (Agreement at ¶III(47).) The Settlement Administrator will send a reminder to Participating
2 Class Members who have not cashed their checks within 120 days after its last mailing to the affected
3 individual. (Agreement at ¶ III(47).) Any settlement checks not cashed within 180 days will be voided
4 and any funds from such uncashed checks will be paid to the California State Controller's Unclaimed
5 Property Fund in the name of and for the benefit of the individual who did not cash their check.
6 (Agreement at ¶ III(47).) Decl. Nordrehaug at ¶19.

7 The Parties have agreed to use ILYM Group as the Settlement Administrator. (Agreement at
8 ¶ III(41).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the
9 expenses of administering the Settlement in an amount not to exceed \$20,000. (Agreement at ¶
10 III(39)(d).) Decl. Nordrehaug at ¶20.

11 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
12 to exceed one-third (1/3) of the Gross Settlement Amount as the Class Counsel Fees Payment.
13 (Agreement at ¶ III(39)(b).) Class Counsel will also be allowed to apply separately for an award of
14 Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶
15 III(39)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
16 each to the Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ III(39)(a).) The
17 Class Counsel Fee Payment, Class Counsel Litigation Expenses Payment, and Class Representative
18 Service Payments shall all be paid from the Gross Settlement Amount. Decl. Nordrehaug at ¶21.

19 The Parties will seek approval from the Court for the PAGA Payment of \$50,000 out of the
20 Gross Settlement Amount, which shall be allocated 75% (\$37,500) to the LWDA as the LWDA's share
21 of the PAGA Payment pursuant to PAGA and 25% (\$12,500) will be distributed to the Aggrieved
22 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
23 III(39)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
24 to the release of the Released PAGA Claims, whether or not they opt out of the Class. (Agreement at
25 ¶ III(39)(c).) As set forth in the accompany proof of service, the LWDA has been served with this
26 motion and the Agreement. Decl. Nordrehaug at ¶22.

27 **III. CASE BACKGROUND**

28 The description of the cases and claims, along with the procedural history are set forth in the

1 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
2 exchange of documents and information in connection with the Action over more than one year which
3 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
4 14. The Parties participated in mediation on March 14, 2022 with Hon. Carl J. West (Ret.), which after
5 arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

8 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
9 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
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 Preliminary approval does not require the trial court to answer the ultimate question of whether a
15 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
16 of the settlement has been given to the class members and after they have been given an opportunity
17 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
18 *Federal Practice* §§23.80 - 23.85 (2003).

19 In considering a potential settlement for preliminary approval purposes, the trial court does not
20 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
21 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
22 *supra*, 48 Cal.App.4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
23 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
24 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
25 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
26 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
27

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

73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

B. Factors To Be Considered In Granting Preliminary Approval

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

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

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

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

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

This settlement is the result of extensive and hard-fought litigation as well as negotiations

1 before an experienced and well-respected mediator. Defendants have expressly denied and continue
2 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
3 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
4 Class Claims of the Class in 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
7 wage 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 Hon. Carl J. West (Ret.), a respected
14 jurist and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
15 preparation for the mediation, Defendants provided Class Counsel with necessary information for the
16 members of the Class, including time data, payroll data and data concerning the composition of the
17 Class. Plaintiffs analyzed the data, and prepared and submitted a mediation brief and damage valuation
18 to the Mediator. At the conclusion of the all-day mediation, the Parties agreed to this Settlement. The
19 final settlement terms were negotiated and set forth in the Agreement now presented for this Court's
20 approval. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and

21
22 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
23 Claims" are defined as "all class claims pled or that could have been pled based on the factual
24 allegations contained in the operative complaint and arising during the Class Period, which includes
25 claims for unfair competition, failure to pay minimum wages (including, but not limited to, any
26 underpayment resulting from an allegedly improper calculation of wages or the regular rate of pay),
27 failure to pay overtime wages (including, but not limited to, any underpayment resulting from an
28 allegedly improper calculation of the regular rate of pay), failure to provide meal periods or meal period
premiums, failure to provide rest breaks or rest break premiums, failure to provide accurate wage
statements, failure to reimburse for expenses, and failure to pay all wages when due), and expressly
excluding all other claims, including claims for vested benefits, wrongful termination, unemployment
insurance, disability, social security, workers' compensation, and class claims outside of the Class
Period {"Released Class Claims"}." (Agreement at ¶ III(49)(a).)

adequate. Decl. Nordrehaug at ¶ 5.

As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants is Two Million Five Hundred Thousand Dollars (\$2,500,000). The Settlement is all-in with no reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

1 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
2 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
3 receive payment according to the same formula. (Agreement at ¶ III(41)(b).) For the estimated 1,050
4 individuals in the Class who collectively worked 166,827 weeks, the Gross Settlement Amount
5 provides an average value of \$2,380 per Class Member and \$14.98 per workweek, and after deductions,
6 the Net Settlement Amount provides an average recovery of \$1,482 per Class Member and \$9.33 per
7 work week. Decl. Nordrehaug, ¶6.

8 The calculations to compensate for the amount due to the Class Members at the time this
9 Settlement was negotiated were calculated in advance of mediation. For the individuals whose claims
10 are at issue in this Action, Plaintiffs analyzed the data for putative class members and determined the
11 potential maximum damages for the class claims. For the Class, Plaintiffs determined that the
12 maximum potential unpaid overtime due to the alleged miscalculation of the regular rate was \$247,328,
13 the *Ferra* claim for meal premiums and sick pay was \$105,260, the maximum potential unpaid wages
14 due to the alleged rounding practice was \$180,849, the maximum potential meal period damages were
15 estimated to be \$7,500,449 based upon an alleged 58% violation rate evidenced in the time punch
16 records and after deducting the meal premiums paid by Defendants, the maximum rest period damages
17 were estimated to be \$9,189,933 based upon the same 58% violation rate, the maximum damages for
18 alleged off the clock work from on call practices was \$395,886, and the maximum damages for
19 unreimbursed expenses were estimated to be \$270,700 based upon cell phone usage of \$10 per month.
20 In total, the damages for the Class were calculated to have a maximum total value of \$17,890,405. In
21 addition, Plaintiffs calculated that the maximum value of the waiting time penalties was between
22 \$1,824,376 and \$3,369,423, and the maximum value of the wage statement penalties were between
23 \$1,943,450 and \$3,356,000, depending on the predicate violation, however, these wage statement and
24 waiting time penalties claims potentially had a much smaller value, even if damages were awarded, to
25 the extent that they are only derivative of the meal and rest break claims.⁴ Defendants dispute
26

27 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
28 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by
Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages

1 Plaintiffs' estimates and believes the amount they can recover for themselves and the Class, if anything
2 at all, is actually much lower. Decl. Nordrehaug, ¶6.

3 Consequently, the Gross Settlement Amount represents 14% of the value of the potential
4 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
5 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
6 risk of certification and the risk of establishing class-wide liability on all claims. Given the amount of
7 the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and
8 reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

9 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
10 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
11 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
12 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
13 argued that all work time was recorded and paid. Defendants contend that their meal and rest period
14 policies fully complied with California law, that Defendants' timekeeping system recorded meal
15 periods, and that meal periods were provided. Defendants also argued that meal period premiums were

16 for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs were
17 properly compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
18 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
19 and when the wages were due."). Additionally, Courts have held that violations of the meal and rest
20 period regulations, which require payment of a "premium wage" for each improper meal period, do **not**
21 give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal.
22 App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336
23 (2018). As a result, at the time of mediation the viability of Plaintiff's claims on these theories was
24 uncertain.

25 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
26 the PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

27 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
28 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 paid when a meal period was not provided, which negated the meal period claim. Further, Defendants
2 argued that Defendants were not required to record rest periods and that there was no evidence that rest
3 periods were not provided given the facially lawful policies. Finally, Defendants could argue that the
4 Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakens Plaintiffs'
5 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants also
6 argue that based on their facially lawful practices, they acted in good faith and without willfulness,
7 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
8 statements. Under the state of the law at the time of mediation, it was questionable whether these
9 penalties could be awarded at all based upon the alleged meal and rest period violations. If successful,
10 Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While
11 Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses have merit
12 and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

13 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
14 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
15 Defendants argued that the individual experience of each putative class member varied with respect to
16 the claims. Defendants could also contest class certification by arguing injury and good faith were case
17 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
18 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256
19 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
20 contended that individual differences in work experiences not only impacted damages but would also
21 impact certification. Finally, even if class certification was successful, as demonstrated by the
22 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
23 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
24 While other cases have approved class certification in wage and hour claims, class certification in this
25 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
26 ¶ 25.

27 After arm's length negotiations between experienced and informed counsel, the Parties
28 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of

1 \$2,500,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

2 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
3 and likely duration of further litigation likewise favors the settlement. Regardless of
4 how this Court might have ruled on the merits of the legal issues, the losing party likely
5 would have appealed, and the parties would have faced the expense and uncertainty of
6 litigating an appeal. ‘The expense and possible duration of the litigation should be
7 considered in evaluating the reasonableness of [a] settlement.’”

8 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
9 (9th Cir. 2000)).

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

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

17 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
18 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(39)(a).)
19 Plaintiffs performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
20 At this stage, the requested service award amount of \$10,000 each is well within the accepted range of
21 awards for purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
22 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
23 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
24 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
25 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
26 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
27 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
28 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
representatives to compensate the employees for the time and effort expended on the case, for the risk
of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive
to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

22 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
23 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
a necessary ticket to the bargaining table' where the parties have sufficient information
to make an informed decision about settlement.'"

24 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
25 213 F.3d at 459).

26 Here, Class Counsel was in far better position to evaluate the fairness of this Settlement because
27 Class Counsel performed informal discovery, received all necessary information which was analyzed,
28 and also performed independent investigations and due diligence to confirm the accuracy of the

1 information supplied by Defendants.

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

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

7 All individuals who are or previously were employed by Defendant Lehigh Hanson
8 Services, LLC in California who were classified as hourly-paid or non-exempt
9 employees during the Class Period, and excluding any members of the settlement
10 classes in the cases of *Avelar v. Hanson Aggregates, LLC*, Superior Court of California,
County of Los Angeles, Case No. 19STCV32068 ("Avelar Action"); and *Rost v. Lehigh
Hanson, Inc.*, Superior Court of the State of California, County of San Luis Obispo,
Case No. 20CV-0225 ("Rost Action").

11 (Agreement at ¶ I(3).)

12 The "Class Period" is April 5, 2017 through June 18, 2022. (Agreement at ¶ I(10).)

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

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

17 Code of Civil Procedure Section 382 authorizes class actions "when the question is one
18 of a common or general interest, of many persons, or when the parties are numerous,
19 and it is impracticable to bring them all before the court...." The party seeking
20 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
"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.

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

22 While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
23 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
24 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
25 settlement only. (Agreement at ¶ II(36).)

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

27 Plaintiffs bring this action on behalf of a Class of individuals during the applicable Class Period.
28

1 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
2 determined through examination of Defendants' files. Given that the Class consists of approximately
3 1,050 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
4 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
5 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs
6 assert that the 1,050 current and former employees that comprise the Class can be identified based on
7 Defendants' records and are sufficiently numerous for class certification. Decl. 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, Plaintiffs contend that common questions of law and fact are present, and specifically the
21 common questions of whether Defendants properly compensated for alleged overtime, sick pay and
22 meal period premiums, whether the Defendants failed to provide meal and rest periods, whether class
23 members were lawfully compensated for all hours worked, whether Defendants failed to provide
24 required expense reimbursement, and whether Class Members are entitled to damages and penalties as
25 a result of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that common questions
26 predominate but will not oppose such a finding for purposes of this Settlement only.

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

28 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class

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

6 In the instant case, Plaintiffs contend that there can be little doubt that the typicality requirement
7 is satisfied. The Plaintiffs, like every other member of the Class, worked for Defendants as non-exempt
8 employee during the Class Period. Plaintiffs contend that, like every other member of the Class, they
9 were subject to the same practices and policies of the Defendants and are subject to the same defenses.
10 Thus, Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same
11 course of conduct by the Defendants, involve the same employment policies and practices of
12 Defendants, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of
13 settlement, Plaintiffs assert that the typicality requirement is met as to the common issues presented in
14 this case. Defendants dispute that typicality exists, but do not oppose a finding of typicality for
15 purposes of this Settlement only.

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

17 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs
18 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
19 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
20 met here. First, Plaintiffs are well aware of their duties as the representatives and have actively
21 participated in the prosecution of this case to date. They effectively communicated with counsel,
22 provided documents to counsel and participated in the investigation and negotiations in the Action.
23 Second, Plaintiffs retained competent counsel who are experienced in employment class actions and
24 who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests
25 of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief
26 under the same set of facts and legal theories. Defendants dispute that the adequacy requirement is
27 satisfied but will not oppose such a finding for purposes of this Settlement only.

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

1 To certify a class, the Court must also determine that a class action is superior to other available
2 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
3 common issues will reduce litigation costs and promote greater efficiency, a class action may be
4 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
5 1996). As courts have previously observed:

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

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

11 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
12 as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, Defendants do not
13 dispute a finding of superiority in this action for purposes of this Settlement only.

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

15 The Court has broad discretion in approving a practical notice program. The Parties have
16 agreed upon procedures by which the Class Members will be provided with written notice of the
17 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
18 with the Agreement, Defendants will provide to the Settlement Administrator an electronic database
19 containing each Class Member’s Class Data. (Agreement at ¶ III(42)(b)(i).) Within 14 days after
20 receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class
21 Members via first-class U.S. Mail using the most current mailing address information available.
22 (Agreement at ¶ III(42)(b)(ii).) The Class Notice, drafted jointly and agreed upon by the Parties
23 through their respective counsel and to be approved by the Court, includes all relevant information. (See
24 Exhibit “A” to the Agreement.) The Class Notice will include, among other information: (i)
25 information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt
26 out; (iii) information to the Class Members regarding how to opt out and how to object to the
27 Settlement; (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of
28 attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award requests; and

1 (vi) the anticipated expenses of the Settlement Administrator. The Class Notice Packet mailed to the
2 Class Members will include a Spanish translation. (Agreement at ¶I(9).) Decl. Nordrehaug at ¶32.

3 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
4 that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement
5 at ¶ III(42)(c).) In the event of a re-mailing, this deadline will be extended by an additional 15 days.
6 Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys'
7 fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(42)(c)(i).) Class
8 Members who do not submit a timely and proper request to opt-out will automatically receive a
9 payment of their Settlement Share. This notice program was designed to meaningfully reach the Class
10 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
11 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
12 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
13 3.769(f).

14 15 **VII. CONCLUSION**

16 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
17 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
18 fairness hearing for a date that is one hundred twenty (120) days from the date of Preliminary Approval.

19 Dated: September 26, 2022 **BLUMENTHAL NORDREHAUG BHOWMIK**
20 **DE BLOUW LLP**

21 By: /s/ Kyle Nordrehaug
22 Kyle R. Nordrehaug, Esq.
23 Attorney for Plaintiffs
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