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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

JUNO CHUA, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

BEECAN HEALTH LLC, a California
Limited Liability Company; SERRANO
POST ACUTE, LLC, a California Limited
Liability Company; CORONA POST
ACUTE, LLC, a California Limited
Liability Company; CALIFORNIA POST
ACUTE LLC, a California Limited
Liability Company; LA FUENTE CARE
POST ACUTE LLC, a California Limited
Liability Company; MONROVIA POST
ACUTE, LLC, a California Limited
Liability Company; ROYAL GARDENS
HEALTHCARE, LLC, a California Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. 21STCV24458

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

Hearing Date: August 1, 2021
Hearing Time: 10:00 a.m.

Judge: Hon. Lawrence P. Riff
Dept: SS-7

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1 **I. INTRODUCTION**

2 Plaintiff Juno Chua (“Plaintiff”) will move for an order: (1) preliminarily approving the
3 proposed settlement of this class action with and Defendants Beecan Health LLC, California Post
4 Acute LLC, Serrano Post Acute, LLC, Corona Post Acute, LLC, La Fuente Care Post Acute LLC,
5 Monrovia Post Acute LLC, and Royal Gardens Healthcare, LLC (“Defendants”); (2) for settlement
6 purposes only, conditionally certifying the Class, which is comprised of “all individuals who are or
7 previously were employed by one or more Defendants in California who were classified as non-exempt
8 employees during the Class Period”; (3) provisionally appointing Plaintiff as the representative of the
9 Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
10 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)
11 approving the form and method for providing notice to the Class of the proposed settlement;
12 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group,
13 Inc. as the Administrator; and (8) scheduling a final approval hearing date proposed for a date in
14 approximately four months to consider the Parties’ motion for final approval of the settlement and entry
15 of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and expenses. Plaintiff and
16 Defendants have reached a full and final settlement of the above-captioned action, which is set forth
17 in the Class Action and PAGA Settlement Agreement (the “Agreement”) filed concurrently with the
18 Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
19 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the Agreement is based
20 on the Los Angeles Superior Court model form for class and PAGA settlements. A redline comparison
21 between the Agreement and the Court’s model form for a class and PAGA settlement is attached as
22 Exhibit #2 to the Decl. Nordrehaug.

23 As consideration for this Settlement, the Gross Settlement Amount is Five Hundred Sixty-Five
24 Thousand Dollars (\$565,000) to be paid by Defendants, as set forth in the Agreement. The Gross
25 Settlement Amount will settle all issues pending in the Action between the Parties and will be made
26 in full and final settlement of the released claims. The Gross Settlement Amount includes all payments
27

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

1 of Individual Class Payments to the Participating Class Members, the Administration Expenses
2 Payment to the Administrator, the Class Counsel Fees Payment and Class Counsel Litigation Expenses
3 Payment to Class Counsel, the Class Representative Service Payment to Plaintiff, and the PAGA
4 Penalties payment to the California Labor and Workforce Development Agency (the “LWDA”) and
5 the Aggrieved Employees. The Gross Settlement Amount does not include the employer’s share of
6 payroll taxes which will be separately paid by Defendants. The Settlement is all-in with no reversion
7 to Defendants and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶3.

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

10 **\$565,000** (Gross Settlement Amount)

- 11 - \$10,000 (Plaintiff’s proposed service award not to exceed \$10,000)
- 12 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$183,333 (Class Counsel Fees Payment - not to exceed one-third of the Gross Settlement Amount)
- 14 - \$10,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$30,000 (Administration Expenses Payment - not to exceed amount)

16 **\$311,667** (Net Settlement Amount)

17 Based upon 1,335 Class Members who collectively worked 82,097 Workweeks (Agreement at ¶ 4.1),
18 the Gross Settlement Amount provides a value of \$423 per Class Member and \$6.88 per Workweek
19 and, after deductions, the Net Settlement Amount provides an average recovery of \$233.45 per Class
20 Member and \$3.79 per Workweek. Decl. Nordrehaug at ¶6.

21 On June 22, 2022, the Parties participated in an all-day mediation session presided over by
22 Jeffrey Krivis, Esq., a respected and experienced mediator of wage and hour class actions. Following
23 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
24 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
25 substantial monetary payment, and there are substantial litigation and class-certification risks.
26 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
27 and enter the proposed order submitted herewith.

28 **II. DESCRIPTION OF THE SETTLEMENT**

The Gross Settlement Amount is Five Hundred Sixty-Five Thousand Dollars (\$565,000).
(Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following

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

7 Defendants shall fund the Gross Settlement Amount in three installments by transmitting the
8 funds to the Administrator as follows: The first installment of \$165,000, along with the amounts
9 necessary to pay Defendants' share of payroll taxes applicable this amount, shall be made within thirty
10 (30) days of Preliminary Approval ("First Installment"). The second installment of \$200,000, along
11 with the amounts necessary to pay Defendants' share of payroll taxes applicable this amount, shall be
12 made eleven (11) months after the First Installment is made ("Second Installment"). The third
13 installment of \$200,000, along with the amounts necessary to pay Defendants' share of payroll taxes
14 applicable this amount, shall be made twelve (12) months after the Second Installment is made ("Third
15 Installment"). In the event Defendants default on any of the payments set forth in this section,
16 Defendants agree that all payments still due and owing on the payment of the Gross Settlement
17 Amount, less any payments received, shall be accelerated and due immediately. (Agreement at ¶ 4.3.)
18 5.1. On a pro rata basis, the Administrator shall proportionately make a total of two (2) payment
19 distributions with the first distribution to be made within thirty (30) days of the Effective Date and the
20 second distribution to be made within thirty (30) days of the final payment of the Third Installment.
21 For each of these two (2) distributions, the Administrator will mail pro-rata checks for all Individual
22 Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
23 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment,
24 and the Class Representative Service Payment. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

25 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
26 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
27 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
28 Administration Expenses Payment (the "Net Settlement Amount") shall be allocated to Participating

1 Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2(e).) From the Net
2 Settlement Amount, the Individual Class Payment for each Participating Class Member will be
3 calculated by (i) dividing the Net Settlement Amount by the total number of Workweeks worked by
4 all Participating Class Members during the Class Period and (b) multiplying the result by each
5 Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Class Workweeks will be
6 calculated based on Defendants' records and reported to Class Members in the Class Notice; however,
7 Class Members will have the right to challenge their number of Class Workweeks. Decl. Nordrehaug
8 at ¶17.

9 Class Members may choose to opt-out of the Settlement by following the directions in the Class
10 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
11 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
12 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including any who
13 submit an opt-out request, still will receive an Individual PAGA Payment and will release of the
14 Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 7.5(d))
15 Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or
16 dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

17 A Participating Class Member must cash the check for his or her Individual Class Payment (and,
18 if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any
19 settlement checks not cashed within 180 days will be voided and any funds represented by such checks
20 sent to the California State Controller's Office, Unclaimed Property Division, in the name of the Class
21 Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
22 Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

23 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
24 in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for
25 settlement administration in an amount not to exceed \$30,000. (Agreement at ¶ 3.2.3.) Decl.
26 Nordrehaug at ¶20. The Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37
27 and Exhibit #5.

28 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not

1 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
2 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
3 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(b).) Subject
4 to Court approval, the Agreement provides for a payment of no more than \$10,000 to Plaintiff as the
5 Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

6 Subject to Court approval, Ten Thousand Dollars (\$10,000) will be paid from the Gross
7 Settlement Amount in settlement of Plaintiff's claim for civil penalties under the California Labor Code
8 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
9 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
10 follows: 75% (\$7,500) shall be allocated to the LWDA as its share of the civil penalties and 25%
11 (\$2,500) allocated to the Aggrieved Employees and distributed as Individual PAGA Payments based
12 on the number of their respective PAGA Period Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in
13 the accompanying proof of service, the LWDA has been served with this motion and the Agreement.
14 Decl. Nordrehaug at ¶22.

15 **III. CASE BACKGROUND**

16 The description of the case and claims, along with the procedural history, is set forth in the
17 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
18 informal exchange of documents and information in connection with the Action which permitted Class
19 Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties
20 participated in private mediation on June 22, 2022 with Jeffrey Krivis, Esq., which after arm's length
21 negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

22 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 23 GRANT PRELIMINARY APPROVAL**

24 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
25 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
26 California "[p]ublic policy generally favors the compromise of complex class action litigation."
27 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
28 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the

1 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
2 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert.*
3 *denied*, 459 U.S. 1217 (1983)).

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

10 The primary question presented on an application for preliminary approval of a proposed class
11 action settlement is whether the proposed settlement is "within the range of possible approval."
12 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
13 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
14 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
15 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
16 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
17 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); *see also Cho v.*
18 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
19 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
20 valuable benefits to the class . . . that were 'particularly valuable in light of the risks plaintiff would have
21 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
22 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
23 settlement is given to the class members and a final settlement hearing is held by the Court.

24
25
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing*
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

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

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

9 In considering a potential settlement for preliminary approval purposes, the trial court need not
10 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
11 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
12 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
13 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.
14 The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a
15 judgment and evaluation by the attorneys for the parties based upon a comparison of ““the terms of the
16 compromise with the likely rewards of litigation.”” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.
17 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT*
18 *Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement,
19 the amount is “not to be judged against a hypothetical or speculative measure of what might have been
20 achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

21 With regard to class action settlements, the opinions of counsel should be given considerable
22 weight in light of their familiarity with the litigation and previous experience with similar cases.
23 *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp.
24 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*,
25 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a presumption of
26 reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts
27 hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms.*
28 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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 “(1) the
4 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has
5 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). No one factor should be determinative, but rather
8 all factors should be considered. The analysis has been summarized as follows:

9 If the proposed settlement appears to be the product of serious, informed, noncollusive
10 negotiations, has no obvious deficiencies, does not improperly grant preferential
11 treatment to class representatives or segments of the class, and falls within the range of
12 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.

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

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

15 **1. The Settlement Is The Product Of Serious, Informed And**
16 **Arm’s Length Negotiations By Experienced Counsel.**

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

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

24 ³ The release applicable to the Class is tethered to allegations in the Action as the “Released Class
25 Claims” are “all class claims pled or could have been pled based on the factual allegations contained
26 in the Operative Complaint which occurred during the Class Period. Except as expressly set forth in
27 this Agreement, Participating Class Members do not release any other claims, including claims for
28 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or claims based on facts
occurring outside the Class Period.” (Agreement at ¶¶ 1.39 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 Jeffrey Krivis, a respected and
7 experienced mediator of wage and hour class actions, in order to reach the Settlement. In preparation
8 for the mediation, Defendants provided Class Counsel with necessary information, including data
9 concerning the composition of the Class. Plaintiff analyzed the data with the assistance of a damages
10 expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the
11 Mediator. Following the all-day mediation, the Parties agreed to the Settlement, which was
12 memorialized in the form of a Memorandum of Understanding. The final terms of the Settlement were
13 negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug
14 at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and
15 adequate.

16 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
17 is Five Hundred Thousand Dollars (\$565,000). The Settlement is all-in with no reversion to
18 Defendants and no need for Class Members to submit claim forms. Decl. Nordrehaug at ¶ 3.

19 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
20 the course of nearly two years, Class Counsel diligently evaluated the Class Members' claims against
21 Defendants. Prior to the settlement negotiations, counsel for Defendants provided Class Counsel with
22 access to necessary information for the Class. In addition, Class Counsel has previously negotiated
23 settlements with other employers in actions involving nearly identical issues and analogous defenses.
24 Based on the informal discovery and their own independent investigation, evaluation and experience,
25 Class Counsel believes that the settlement with Defendants on the terms set forth in the Agreement is
26 fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and
27 circumstances, including the risk of significant delay, the risk that the claims would not be allowed to
28 proceed on a class or representative basis, the defenses asserted by Defendants, and potential appellate

1 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 Defendants and then litigating possible appeals that could take several years. Class
4 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
5 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent
6 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
7 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
8 is in the best 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 has no "obvious deficiencies" and is well within the range of possible
17 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
18 payment according to the same formula. (Agreement at ¶ 3.2.4.) Based upon 1,335 Class Members
19 who collectively worked 82,097 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount
20 provides a value of \$423 per Class Member and \$6.88 per Workweek and, after deductions, the Net
21 Settlement Amount provides an average recovery of \$233.45 per Class Member and \$3.79 per
22 Workweek. Decl. Nordrehaug, ¶6.

23 The calculations to compensate for the amount due to the Class Members at the time the
24 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
25 mediation. Class Counsel analyzed the data for putative class members and determined the potential
26 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
27 wages due to the alleged miscalculation of the regular rate for overtime pay was \$289,807, the
28 maximum value of the claim for unpaid wages due to alleged off-the-clock work of one hour per week

1 was \$1,823,219, the maximum potential damages for alleged meal period violations were estimated to
2 be \$1,887,678 based upon a 27% violation rate, the maximum potential damages for alleged rest period
3 violations were estimated to be \$1,887,678 based upon the same 27% violation rate, and the maximum
4 potential damages for the alleged failure to reimburse business expenses were calculated to be \$42,355.
5 In total, the damages for the Class were calculated to have a maximum potential total value of
6 \$5,920,737. In addition, Plaintiff calculated that the maximum value of the potential waiting time
7 penalties were \$5,502,233, and the maximum value of the potential wage statement penalties were
8 \$1,655,450.⁴ Decl. Nordrehaug, ¶6.

9 Consequently, the Gross Settlement Amount represents more than 9.5% of Plaintiff's
10 calculation of the potential maximum damages at issue for the Class in this case, assuming these
11 amounts could all be proven in full at trial.⁵ The above maximum calculations should then be adjusted
12 in consideration for both the risk of class certification and the risk of establishing class-wide liability
13 on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the
14 Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl.
15 Nordrehaug, ¶6.

17 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
19 asserted by Defendants, including but not limited to, a good-faith dispute defense as to whether any
20 premium wages for meal or rest periods or other wages were owed given Defendants' position that
21 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 does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

24 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
28 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 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
3 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
4 Defendants maintain that its practices complied with all applicable wage and hour laws. Defendants
5 maintain that all Class Members' work time was properly recorded and compensated and that there was
6 no miscalculation of the regular rate. Defendants contend that its meal and rest period policies and
7 practices provide Class Members with meal and rest periods that exceed the requirements of California
8 law. As to expense reimbursement, Defendants maintain that it did not fail to provide reimbursement
9 for necessary business expenses because, among other things, Defendants provides its employees with
10 all necessary personal protective equipment, and employees are not required to use their personal cell
11 phones to perform their work. Defendants maintain that the decisions in *Brinker v. Superior Court*, 53
12 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and
13 *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims in terms of
14 liability and value, and preclude his claim from proceeding on a class or representative basis.
15 Defendants also maintain that a good faith dispute and absence of willfulness would negate the claims
16 for waiting time penalties and/or failure to provide accurate itemized wage statements. Defendants also
17 argued that the existence of arbitration agreements with Class members would preclude a class-wide
18 recovery at trial. Finally, one overarching concern was the ability to impose liability on Defendants
19 as a whole, as opposed to a single entity with limited ability to pay. If successful, Defendants' defenses
20 could eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these
21 defenses could be overcome, Defendants maintain these defenses have merit and therefore present a
22 serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

23 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
24 to obtain class certification and thereby not recover on behalf of any employees other than himself.
25 Defendants argued that the individual experience of each putative class member varied with respect to
26 the claims, which would preclude the claims from proceeding on a class or representative basis. For
27 instance, Plaintiff's meal and rest period claims would require individualized inquiries into whether
28 each employee took a compliant meal or rest period on a given shift and, if not, why; and Plaintiff's

1 off-the-clock claims would require individualized inquiries into whether each employee ever performed
2 off-the-clock work and, if so, why. Plaintiff is aware of other cases where class certification of similar
3 claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification
4 of rest break claims). Finally, even if class certification was successful, as demonstrated by the
5 California Supreme Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014),
6 there are significant hurdles to overcome for a class-wide recovery even where a class has been
7 certified. While other cases have approved class certification of wage and hour claims, class
8 certification in this Action would have been hotly disputed and was by no means a foregone conclusion.
9 Decl. Nordrehaug, ¶ 25.

10 After arm's-length negotiations between experienced and informed counsel, the Parties
11 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
12 \$565,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

21 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 22 **Class Representatives Or Segments Of The Class.**

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

28 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
concurrently filed declaration of Plaintiff is presented herewith in support of the request. For purposes

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

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

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

24 Based on the informal discovery and their own independent investigation and evaluation, Class
25 Counsel is of the opinion that the Settlement with Defendants for the consideration and on the terms
26 set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in
27 light of all known facts and circumstances, including the risk of significant delay, defenses asserted by
28 Defendants, and numerous potential appellate issues. There can be no doubt that counsel for both

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

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

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

10 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
11 213 F.3d at 459).

12 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
13 Class Counsel received relevant documents and data through both formal and informal discovery,
14 evaluated the information with the assistance of an expert, and performed independent investigations
15 and due diligence to confirm the accuracy of the information supplied by Defendants.

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

17 Plaintiff contends that the Settlement meets all of the requirements for certification of a
18 settlement class under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
19 the Court may appropriately approve the Class as defined in the Agreement. This Court should
20 conditionally certify the Class, for settlement purposes only, defined as follows:

21 All individuals who are or previously were employed by one or more Defendants in
22 California who were classified as non-exempt employees during the Class Period.

23 (Agreement at ¶ 1.5.)

24 The "Class Period" is from March 5, 2020 through September 22, 2022. (Agreement at ¶ 1.13.)

25 **A. Class Certification for Purposes Of Settlement.**

26 The California Supreme Court has summarized the standard for determining whether class
27 certification is appropriate under California Code of Civil Procedure section 382 as follows:

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

1 “community of interest” requirement embodies three factors: (1) predominant common
2 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.

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

4 Plaintiff contends that the proposed Class satisfies the criteria for certification under Code of
5 Civil Procedure section 382. Defendants disputes that Plaintiff can satisfy any of these requirements
6 for class certification in the litigation context, but does not oppose certification for purposes of the
7 Settlement. Accordingly, the proposed Class should be certified for purposes of the Settlement only.
8 (Agreement at ¶ 2.6.)

9 **1. Ascertainability And Numerosity.**

10 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for
11 Defendants during the applicable Class Period. Plaintiff asserts that all of these individuals are
12 ascertainable because the class members can readily be determined through examination of Defendants’
13 files. Given that the Class consists of approximately 1,335 members, Plaintiffs maintain that
14 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10
15 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
16 48 members satisfies numerosity requirement.) Here, Plaintiff asserts that the 1,335 individuals who
17 comprise the Class can be identified based on Defendants’ records and are sufficiently numerous for
18 class certification. Decl. Nordrehaug at ¶30.

19 **2. Predominance of Common Issues Of Law and Fact.**

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

25 Commonality exists if there is a predominant common legal question regarding how an
26 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
27 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
28 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the

1 certification stage since the question is “essentially a procedural one that does not ask whether an action
2 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

3 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
4 common questions of whether Defendants’ practices were lawful, whether Class members were
5 lawfully compensated for all hours worked, whether Defendants properly calculated wages, whether
6 the Defendants failed to provide all legally required meal and rest periods to Class Members, whether
7 Defendants failed to provide required expense reimbursement, and whether Class Members are entitled
8 to damages and penalties as a result of these alleged practices. Decl. Nordrehaug, ¶30.

9 3. Typicality.

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

16 In the Action, Plaintiff contends that there can be little doubt that the typicality requirement is
17 satisfied. Plaintiff worked for Defendants as a non-exempt employee during the Class Period. Plaintiff
18 contends that, like every other member of the Class, he was subject to the same practices and policies
19 of Defendants and was subject to the same defenses. Thus, Plaintiff asserts that the claims of Plaintiff
20 and the Class Members arise from the same course of conduct by the Defendants, involve the same
21 employment policies and practices of Defendants, and are based on the same legal theories. Decl.
22 Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement is
23 met as to the common issues presented in this case.

24 4. Adequacy.

25 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
26 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
27 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiff is well aware of
28 his duties as the representative of the Class and has actively participated in the prosecution of this case

1 to date. Plaintiff effectively communicated with counsel, provided documents to counsel, and
2 participated in the investigation and negotiations in the Action. Second, Plaintiff retained competent
3 counsel who are experienced in employment class actions and who have no conflicts. Decl.
4 Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiff and those of
5 the Class. Both Plaintiff and the Class Members seek monetary relief under the same set of facts and
6 legal theories.

7 **5. Superiority.**

8 To certify a class, a court also must 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.

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

23 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
24 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
25 upon procedures by which the Class Members will be provided with written notice of the Settlement
26 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
27 Agreement, Defendants 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 ¶ 7.4(b).) The mailing will include a

1 Spanish translation of the Class Notice. (Agreement at ¶ 7.4(b).)

2 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
3 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)

4 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
5 impact on the rights of the Class Members if they do not opt out, including a description of the
6 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
7 to the Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
8 Payment) for each of the Class Members and how to dispute the information used to calculate the
9 payment; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s
10 service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

11 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
12 that the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that the
13 Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.42,
14 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
15 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
16 Members who do not submit a timely and proper request to opt out will automatically receive a
17 payment of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This
18 notice program was designed to meaningfully reach the Class Members and it advises them of all
19 pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and
20 distribution of the Class Notice satisfies the requirements of due process, is the best notice practicable
21 under the circumstances, and complies with Rules of Court 3.766 and 3.769(f).

22 **VII. CONCLUSION**

23 Based on the foregoing, the Parties respectfully request that the Court preliminarily approve the
24 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
25 and schedule the final fairness hearing for the proposed date in approximately four months.

26 Dated: June 16, 2023 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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