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

LILIANA ANDERSON, on behalf of
herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

RAMM HOSPITALITY, INC., a California
Corporation; PRIME HOSPITALITY
SERVICES, LLC, a California Limited
Liability Company; and DOES 1 through
50, inclusive,

Defendants.

Case No. BCV-21-101048

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

Hearing Date: August 1, 2023
Hearing Time: 8:30 a.m.

Judge: Hon. Eric Bradshaw
Div.: J

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1 **I. INTRODUCTION**

2 Plaintiff Liliana Anderson (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 Ramm Hospitality, Inc. and Prime Hospitality Services, LLC (“Defendants”), and seeks entry of an
5 order: (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 were employed by Defendants in California and classified as an hourly, non-exempt employee at any
8 time during the Class Period” of May 10, 2017 through February 4, 2023; (3) provisionally appointing
9 Plaintiff as the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle
10 R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of
11 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the
12 form and method for providing class-wide notice; (6) directing that notice of the proposed settlement
13 be given to the Class; (7) appointing ILYM Group as the Administrator; and (8) scheduling a final
14 approval hearing date proposed for December 12, 2023 to consider Plaintiff’s motion for final approval
15 of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and
16 expenses. Plaintiff and Defendant (collectively the “Parties”) have reached a full and final settlement
17 of the above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement
18 ("Agreement") filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
19 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith,
20 and the form of the Agreement is based on the Los Angeles Superior Court model form for class and
21 PAGA settlements.

22 As consideration for this Settlement, the Gross Settlement Amount is Four Hundred
23 Seventy-Five Thousand Dollars (\$475,000) to be paid by Defendants, as set forth in the Agreement.
24 The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will
25 be made in full and final settlement of the Released Class Claims. The Gross Settlement Amount
26 includes all payments of Individual Class Payments to the Participating Class Members, Administration
27

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

1 Expenses Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class
2 Representative Service Payment, and the PAGA Payment. The Gross Settlement Amount does not
3 include the employer's share of payroll taxes which will be separately paid by Defendants. The
4 Settlement is all-in with no reversion to Defendants and no need to submit a claim form. Decl.
5 Nordrehaug at ¶3.

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

8 **\$475,000** (Gross Settlement Amount)

- 9 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 10 - \$158,333 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$10,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 11 - \$10,000 (Administration Expenses Payment - not to exceed amount)

12 **\$266,667** (Net Settlement Amount)

13 Based upon 235 Class Members who collectively worked 9,586 Workweeks, the Gross Settlement
14 Amount provides a value of \$2,021 per Class Member and \$49 per Workweek and after deductions,
15 the Net Settlement Amount provides an average recovery of \$1,134 per Class Member and a recovery
of \$27.81 per Workweek. Decl. Nordrehaug at ¶6.

16 On September 22, 2023, the Parties participated in an all-day mediation session presided over
17 by Jeffrey Krivis, Esq., a respected and experienced mediator of wage and hour class actions. The
18 Parties were unable to reach a settlement at mediation, but continued settlement negotiations through
19 the mediator for several months. In or around February of 2023, each side, represented by its respective
20 counsel, were able to agree to settle the Action based upon a mediator's proposal. Decl. Nordrehaug
21 at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because
22 there is a substantial monetary payment, and there are substantial litigation and class-certification risks.
23 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
24 and enter the proposed order submitted herewith.

25 **II. DESCRIPTION OF THE SETTLEMENT**

26 The Gross Settlement Amount is Four Hundred Seventy-Five Thousand Dollars (\$475,000).
27 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
28 elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class

1 Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
2 Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties
3 payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendants' share
4 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
5 to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

6 Defendants shall pay the Gross Settlement Amount in three installments ("Payments"). The first
7 Payment, which shall be equal to 1/3 of the Gross Settlement Amount, shall be paid within fourteen
8 (14) days of the Effective Date or December 1, 2023, whichever is later. The second Payment, which
9 shall be equal to 1/3 of the Gross Settlement Amount, shall be paid by December 1, 2024. The third
10 Payment, which shall be equal to the remaining 1 /3 of the Gross Settlement Amount, shall be paid by
11 December 1, 2025. (Agreement at ¶4.3.) The distribution of Individual Class Payments to Participating
12 Class Members along with the other Court-approved distributions shall be made by the Administrator
13 within fourteen (14) days after Defendant fully funds the Gross Settlement Amount. (Agreement at ¶
14 5.1.) Decl. Nordrehaug at ¶16.

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

26 Class Members may choose to opt-out of the Settlement by following the directions in the Class
27 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
28 Participating Class Members who will be bound by the Settlement and will be entitled to receive an

1 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
2 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
3 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
4 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
5 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
6 Decl. Nordrehaug at ¶18.

7 A Participating Class Member must cash his or her Individual Class Payment check within 180
8 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
9 be voided and any funds represented by such checks paid to Court Appointed Special Advocates
10 (CASA) of Kem County consistent with Code of Civil Procedure Section 384(b) ("Cy Pres Recipient").
11 (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

12 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
13 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
14 administration in an amount not to exceed \$10,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

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

21 Subject to Court approval, Ten Thousand Dollars (\$10,000) will be paid from the Gross
22 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
23 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
24 the PAGA Payment shall be allocated as follows: 75% (\$7,500) shall be allocated to the Labor
25 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$2,500)
26 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
27 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
28 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.

1 Nordrehaug at ¶22.

2 **III. CASE BACKGROUND**

3 The description of the case and claims, along with the procedural history, is set forth in the
4 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
5 exchange of documents and information in connection with the Action which permitted Class Counsel
6 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
7 in mediation on September 22, 2022 with Jeffrey Krivis, Esq., which after arm's length negotiations
8 over several months, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

11 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
12 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
13 California "[p]ublic policy generally favors the compromise of complex class action litigation."
14 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
15 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
16 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
17 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
18 denied, 459 U.S. 1217 (1983)).

19 Preliminary approval is the first of three steps that comprise the approval procedure for
20 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
21 members. The third step is a final settlement approval hearing, at which evidence and argument
22 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
23 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
24 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

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

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

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
23 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

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

1 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
2 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
3 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
4 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
5 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
6 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
7 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

8 With regard to class action settlements, the opinions of counsel should be given considerable
9 weight both because of counsel’s familiarity with this litigation and previous experience with cases
10 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
11 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
12 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
13 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
14 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
15 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

24 If the proposed settlement appears to be the product of serious, informed, noncollusive
25 negotiations, has no obvious deficiencies, does not improperly grant preferential
26 treatment to class representatives or segments of the class, and falls within the range of
27 possible approval, then the court should direct that notice be given to the class members
28 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.

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

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

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

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

17 The Parties attended an arms-length mediation session with Jeffrey Krivis, a respected and
18 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
19 for the mediation, Defendants provided Class Counsel with necessary information for the members of
20 the Class, including payroll data, time punch data, and information concerning the composition of the
21 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and
22 prepared and submitted a mediation brief and damage valuation to the Mediator. After this all-day
23 mediation, the Parties were unable to reach a settlement. The Parties, however, continued their

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

1 negotiations through the mediator, and eventually accepted a mediator's proposal, which was
2 memorialized in the form of a Memorandum of Understanding. The final settlement terms were
3 negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug
4 at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and
5 adequate.

6 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
7 is Four Hundred Seventy-Five Thousand Dollars (\$475,000). The Settlement is all-in with no reversion
8 to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

26 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
27 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
28 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that

1 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
2 influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

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

5 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
6 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
7 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 235 Class
8 Members who collectively worked 9,586 Workweeks (Agreement at ¶ 4.1), the Gross Settlement
9 Amount provides a value of \$2,021 per Class Member and \$49 per Workweek and after deductions,
10 the Net Settlement Amount provides an average recovery of \$1,134 per Class Member and a recovery
11 of \$27.81 per Workweek. Decl. Nordrehaug, ¶6.

12 The calculations to compensate for the amount due to the Class Members at the time this
13 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
14 mediation. Class Counsel analyzed the data for putative class members and determined the potential
15 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
16 wages due to alleged rounding was \$23,375, the maximum value of the claim for unpaid wages due to
17 alleged off-the-clock work was \$101,502, the maximum potential damages for unpaid meal premiums
18 were estimated to be \$448,094 based upon a 42% violation rate and after deduction for meal premiums
19 paid by Defendants, the maximum potential rest period damages were estimated to be \$429,190 based
20 upon the same 42% violation rate, and the maximum potential damages for failure to provide expense
21 reimbursement were calculated to be \$137,680. In total, the damages for the Class were calculated to
22 have a maximum potential total value of \$1,139,840. In addition, Plaintiff calculated that the maximum
23 value of the potential waiting time penalties were \$359,747, and the maximum value of the potential
24 wage statement penalties were \$363,150.⁴ Decl. Nordrehaug, ¶6.

25 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
27 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for
28 meal or rest periods or other wages were owed given Defendants' position that Plaintiff and Class
Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
(2010) ("There is no willful failure to pay wages if the employer and employee have a good faith

1 Consequently, the Gross Settlement Amount represents more than 41% of the potential
2 maximum damages calculated above for the Class in this case, assuming these amounts could all be
3 proven in full at trial.⁵ The above calculations, however, were based upon 19,607 workweeks, when
4 if fact the actual workweeks turned out to be nearly half that amount. As such, the above calculations
5 likely overstate the damages by 48%. The maximum calculations should then be adjusted in
6 consideration for both the risk of class certification and the risk of establishing class-wide liability on
7 all claims. Given the amount of the Settlement as compared to the potential value of the claims, the
8 Settlement is most certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl.
9 Nordrehaug, ¶6.

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
13 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
14 argued that all work time was properly recorded and paid for. Defendants argued that any rounding was
15 facially neutral and therefore lawful. *See See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889,
16 901(2012) (holding rounding policies are only lawful if they are consistently applied and, on average,
17 favor neither overpayment nor underpayment of wages); Defendants contend that its meal and rest
18 period policies fully complied with California law and Defendants did not fail to provide the
19 opportunity for legally required meal and rest breaks. As to expense reimbursement, Defendants
20 _____
21 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.
24 Nordrehaug at ¶ 33.

25 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
26 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
27 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
28 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 contended that it did not fail to provide reimbursement for necessary business expenses and that there
2 were no such expenses that had not already been reimbursed or that claimed expenses were incurred
3 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
4 Defendants could also argue that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012),
5 *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy*
6 *Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class
7 certifiability as to the meal and rest period claims. Defendants maintain that based on its facially lawful
8 practices, it acted in good faith and without willfulness, which if accepted would negate the claims for
9 waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could
10 eliminate or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses
11 could be overcome, Defendants maintain their defenses have merit and therefore present a serious risk
12 to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

25 After arm's length negotiations between experienced and informed counsel, the Parties
26 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
27 \$475,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

28 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,

1 and likely duration of further litigation likewise favors the settlement. Regardless of
2 how this Court might have ruled on the merits of the legal issues, the losing party likely
3 would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be
considered in evaluating the reasonableness of [a] settlement.'"

4 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
5 (9th Cir. 2000)).

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

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

13 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
14 her service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
15 performed her duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
16 Declaration of the Plaintiff is presented with this motion in support of this request. For purposes of this
17 preliminary approval stage, the requested service award of \$10,000 is well within the accepted range
18 of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
19 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
20 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
21 (approving \$10,000 service award where class member recovery was \$375); *Louie v. Kaiser*
22 *Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service
23 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
24 *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
25 \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class
26 representatives to compensate the employees for the time and effort expended on the case, for the risk
27 of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive
28 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 engaged in an investigation of the claims
7 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
8 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
9 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
10 possessed sufficient information to make an informed judgment regarding the likelihood of success on
11 the merits and the results that could be 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 Defendant for the consideration and on the terms set
14 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
15 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
24 a necessary ticket to the bargaining table' where the parties have sufficient information
25 to make an informed decision about settlement.'"

26 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
27 213 F.3d at 459).

28 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
Class Counsel performed formal discovery, obtained a full production of documents through informal
discovery, received all necessary information which was evaluated with the assistance of an expert, and

1 performed independent investigations and due diligence to confirm the accuracy of the information
2 supplied by Defendants.

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

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

8 All individuals who were employed by Defendants in California and classified as an
9 hourly, non-exempt employee at any time during the Class Period.

10 (Agreement at ¶ 1.5.)

11 The “Class Period” is from May 10, 2017 through February 4, 2023. (Agreement at ¶ 1.13.)

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

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

16 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
17 of a common or general interest, of many persons, or when the parties are numerous,
18 and it is impracticable to bring them all before the court....” The party seeking
19 certification has the burden to establish the existence of both an ascertainable class and
20 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 Plaintiff 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 this settlement only. (Agreement at ¶ 2.7.)

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

27 Plaintiff brings this Action on behalf of a Class of hourly, non-exempt employees who worked
28 for Defendants during the applicable Class Period. Plaintiff asserts that all of these individuals are
ascertainable because the class members can readily be determined through examination of Defendants’

1 files. Given that the Class consists of approximately 235 members, Plaintiff maintains that numerosity
2 is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members
3 sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members
4 satisfies numerosity requirement.) Here, Plaintiff asserts that the 235 individuals who comprise the
5 Class can be identified based on Defendants' records and are sufficiently numerous for class
6 certification. Decl. Nordrehaug at ¶30.

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

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

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

19 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
20 common questions of whether Defendants' practices were lawful, whether Class Members were
21 lawfully compensated for all hours worked, whether the rounding practices were lawful, whether the
22 Defendants failed to provide all legally required meal and rest periods to class members, whether
23 Defendants failed to provide required expense reimbursement, and whether Class Members are entitled
24 to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that
25 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

26 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

27 The typicality requirement requires the Plaintiff to demonstrate that the members of the Class
28 have the same or similar claims as the Plaintiff. "The typicality requirement is met when the claims

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

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

14 **E. The Class Representative Fairly and Adequately Protected the Class**

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

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

27 To certify a class, the Court must also determine that a class action is superior to other available
28 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of

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

4 Absent class treatment, each individual plaintiff would present in separate, duplicative
5 proceedings the same or essentially the same arguments and evidence, including expert
6 testimony. The result would be a multiplicity of trials conducted at enormous expense
7 to both the judicial system and the litigants. “It would be neither efficient nor fair to
8 anyone, including defendants, to force multiple trials to hear the same evidence and
9 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, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
12 as pled by the Plaintiff. 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. *7- Eleven Owners for*
16 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
17 upon procedures by which the Class Members will be provided with written notice of the Settlement
18 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
19 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
20 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
21 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
22 current mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the
23 Class Notice will be included in the mailing. (Agreement at ¶¶ 1.11 and 8.4(b).)

24 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
25 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
26 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
27 impact on the rights of the Class Members if they do not opt out, including a description of the
28 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award

1 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

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

13 **VII. CONCLUSION**

14 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
15 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
16 fairness hearing for the proposed date of December 12, 2023.

17 Dated: July 6, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

19 By: /s/ Kyle Nordrehaug
20 Kyle R. Nordrehaug, Esq.
21 Attorney for Plaintiff
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