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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

ERIC JACOBS, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

CAL-STATE AUTO PARTS, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: **37-2021-00031418-CU-OE-CTL**

[Consolidated with Case No.
37-2021-00031457-CU-OE-CTL]

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

Hearing Date: October 6, 2023
Hearing Time: 8:30 a.m.

Judge: Hon. Ronald F. Frazier
Dept.: 65

Action Filed: July 22, 2021
Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	4
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	5
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	6
B.	Factors To Be Considered In Granting Preliminarily Approval.....	7
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	7
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	9
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	12
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	13
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	13
A.	California Code of Civil Procedure §382.....	14
B.	The Proposed Class Is Ascertainable and Numerous	14
C.	Common Issues of Law and Fact Predominate.....	15
D.	The Claims of the Plaintiff Are Typical of the Class Claims	15
E.	The Class Representation Fairly and Adequately Protected the Class	16
F.	The Superiority Requirement Is Met	16
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	17
VII.	CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases:

Page:

<i>Boggs v. Divested Atomic Corp.</i> , 141 F.R.D. 58 (S.D. Ohio 1991)	17
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	14
<i>Boyd v. Bechtel Corp.</i> , 485 F.Supp. 610 (N.D. Cal. 1979)	7
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	5
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	5, 6, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	10, 12
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	11
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	5
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7 th Cir. 1982)	5
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	15
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. January 27, 2007)	11, 12, 13
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	11, 15, 16
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	12
<i>In re Tableware Antitrust Litig.</i> , 484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989)	7, 9

1	<i>Kirkorian v. Borelli,</i>	
2	695 F. Supp. 446 (N.D. Cal. 1988)	7
3	<i>Kullar v. Foot Locker,</i>	
4	168 Cal. App. 4th 116 (2008)	8
5	<i>Linder v. Thrifty Oil Co.,</i>	
6	23 Cal. 4th 429 (2003)	15
7	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
8	2008 WL 4473183 (S.D.Cal. Oct. 06, 2008)	12
9	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	
10	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018).	12
11	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
12	221 F.R.D. 523 (C.D. Cal. 2004).	7
13	<i>Nordstrom Comm'n Cases,</i>	
14	186 Cal. App. 4th 576 (2010)	5
15	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	
16	688 F.2d. 615 (9th Cir. 1982)	5, 6, 7
17	<i>Reaves v. Ketoro, Inc.,</i>	
18	2020 U.S. Dist. Lexis 167926 (C.D. Cal. 2020).	16
19	<i>Rose v. City of Hayward,</i>	
20	126 Cal.App.3d 926 (1981)	14
21	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
22	34 Cal. 4th 319 (2004)	14, 15, 17
23	<i>Sayaman v. Baxter Healthcare Corp.,</i>	
24	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010).	6
25	<i>Stovall-Gusman v. W.W. Granger, Inc.,</i>	
26	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	10
27	<i>Tate v. Weyerhaeuser Co.,</i>	
28	723 F.2d 598 (8th Cir. 1983)	15
	<i>Valentino v. Carter-Wallace, Inc.,</i>	
	97 F.3d 1227 (9th Cir. 1996)	17
	<i>Vasquez v. Superior Court,</i>	
	4 Cal.3d 800 (1971)	5
	<i>Weinberger v. Kendrick,</i>	
	698 F.2d 61 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983).	7
	<i>Wershba v. Apple Computer, Inc.,</i>	
	91 Cal.App.4th 224 (2001)	6

1 **Statutes, Rules and Regulations:**

2 California Code of Civil Procedure §382 13, 14

3 California Labor Code §2698 4

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5 California Rules of Court, rule 3.766 18

6 California Rules of Court, rule 3.769 5, 18

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8 **Secondary Sources:**

9 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) 5, 6, 15

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

11 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003) 6

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1 **I. INTRODUCTION**

2 Plaintiff Eric Jacobs (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Cal-State Auto Parts, Inc. (“Defendant”), and seeks entry of an order: (1) preliminarily approving the
5 proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally
6 certifying the Class, which is comprised of “all individuals who were employed by Defendant in
7 California and classified as hourly, non-exempt employees at any time during the Class Period”, which
8 is July 22, 2017 through October 28, 2022; (3) provisionally appointing Plaintiff as the representative
9 of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
10 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (5) approving the
11 form and method for providing class-wide notice; (6) directing that notice of the proposed settlement
12 be given to the class; (7) appointing ILYM Group as Administrator, and (8) scheduling a final approval
13 hearing date for February 16, 2024 to consider Plaintiff’s motion for final approval of the settlement
14 and entry of the Judgment, and Plaintiff’s motion for approval of attorneys' fees and expenses. Plaintiff
15 and Defendant (collectively the “Parties”) have reached a full and final settlement of the
16 above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement
17 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
18 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.
19 The form of the Agreement is based upon the Los Angeles County Superior Court model form for a
20 class and PAGA settlement.

21 As consideration for this Settlement, the Gross Settlement Amount is Nine Hundred Sixty
22 Thousand Dollars (\$960,000) (the “Gross Settlement Amount”) to be paid by Defendant, as set forth
23 in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between
24 the Parties and will be made in full and final settlement of the Released Class Claims in exchange for
25 the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the
26 costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative
27

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

1 Service Payment, and (d) the PAGA Penalties payment to the LWDA and the Aggrieved Employees.
2 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include the employer's share of payroll
3 taxes which will be separately paid by Defendants. (Id.) The Settlement is all-in with no reversion to
4 Defendants and no need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

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

7 **\$960,000** (Gross Settlement Amount)
8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
9 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10 - \$320,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
11 - \$20,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
12 - \$20,000 (Administration Expenses Payment - not to exceed amount)
13 **\$570,000** (Net Settlement Amount)

14 Based upon 647 Class Members who collectively worked 67,436 Workweeks, the Gross Settlement
15 Amount provides a value of \$1,483 per Class Member and \$14 per Workweek and after deductions the
16 Net Settlement Amount provides an average recovery of \$880.98 per Class Member and a recovery of
17 \$8.45 per Workweek. Decl. Nordrehaug at ¶6.

18 On July 21, 2022, the Parties participated in an all-day mediation session presided over by
19 Jeffrey Krivis, a respected and experienced mediator of wage and hour class actions. Following the
20 mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which
21 was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The
22 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
23 substantial monetary payment, and there are significant litigation and class-certification risks.
24 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
25 and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Nine Hundred Sixty Thousand Dollars (\$960,000).
28 (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following
elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties

1 payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share
2 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
3 to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

4 Within fifteen (15) days of the Effective Date, Defendant shall deposit the Gross Settlement
5 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
6 to Participating Class Members along with the other Court-approved distributions shall be made by the
7 Administrator within fourteen (14) days after Defendant funds the Gross Settlement Amount.
8 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

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

1 A Participating Class Member must cash his or her Individual Class Payment check within 180
2 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
3 be voided and any funds from such uncashed checks will be paid to the California Controller's
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
5 to the requirements of California Code of Civil Procedure Section 384, subd. (b), as the entire Net
6 Settlement Amount will be paid out to Participating Class Members or Aggrieved Employees, whether
7 or not they all cash their checks. (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

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

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

17 Subject to Court approval, Twenty Thousand Dollars (\$20,000) will be paid from the Gross
18 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
19 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
20 the PAGA Payment shall be allocated as follows: 75% (\$15,000) shall be allocated to the Labor
21 Workforce Development Agency ("LWDA") as its share of the civil penalties and and 25% (\$5,000)
22 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
23 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
24 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
25 Nordrehaug at ¶22.

26 **III. CASE BACKGROUND**

27 The description of the case and claims, along with the procedural history is set forth in the
28 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the

1 exchange of documents and information in connection with the Action over more than two years which
2 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
3 14. The Parties participated in mediation on July 21, 2022 with Jeffrey Krivis, which after arms' length
4 negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

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

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

19 In considering a potential settlement for preliminary approval purposes, the trial court does not
20 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
21 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
22 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
23 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
24 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
25 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
26 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
27 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
28 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the

1 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
2 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

3 With regard to class action settlements, the opinions of counsel should be given considerable
4 weight both because of counsel’s familiarity with this litigation and previous experience with cases
5 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
6 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
7 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
8 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
9 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
10 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

19 If the proposed settlement appears to be the product of serious, informed, noncollusive
20 negotiations, has no obvious deficiencies, does not improperly grant preferential
21 treatment to class representatives or segments of the class, and falls within the range of
22 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.

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

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

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

27 This settlement is the result of extensive and hard-fought litigation as well as negotiations
28 before an experienced and well-respected mediator. Defendant haas expressly denied and continues
to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and

1 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
2 Class Claims of the Class in accordance with this Settlement.³

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

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

20 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
21 Nine Hundred Sixty Thousand Dollars (\$960,000). The Settlement is all-in with no reversion to
22 Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

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

26 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
27 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
28 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 647 Class

1 Members who collectively worked 67,436 Workweeks, the Gross Settlement Amount provides a value
2 of \$1,483 per Class Member and \$14 per Workweek and after deductions the Net Settlement Amount
3 provides an average recovery of \$880.98 per Class Member and a recovery of \$8.45 per Workweek.
4 Decl. Nordrehaug, ¶6.

5 The calculations to compensate for the amount due for the Class at the time of the mediation
6 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
7 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
8 wages for the employees. The maximum potential damages were calculated to be \$211,239 for the
9 alleged unpaid wages due to off the clock work, \$2,408,041 for alleged meal period damages based
10 upon a 54.6% potential violation rate observed in the shifts analyzed, \$882,190 for alleged rest period
11 damages based upon a 20% violation rate, \$77,685 for alleged unreimbursed business expenses for
12 personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total damage
13 valuation was calculated that Defendant was subject to a maximum damage claim in the amount of
14 \$3,579,155. As to potential penalties, Plaintiff calculated that potential waiting time penalties were
15 a maximum of \$1,125,927 and potential wage statement penalties were \$172,300. Defendant
16 vigorously disputed Plaintiff's calculations and exposure theories. Decl. Nordrehaug, ¶6.

17 Consequently, the Gross Settlement Amount of \$960,000 represents more than 26% of the
18 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
19 Given the amount of the settlement as compared to the potential value of claims in this case and the
20 defenses asserted by Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this

21
22 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
23 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

24 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
25 settlement where the settlement amount constituted approximately 25% of the estimated overtime
26 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
27 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
28 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action

1 litigation has been met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
5 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
6 work time was paid for. Defendants contend that their meal and rest period policies fully complied with
7 California law and that Defendant's timekeeping system recorded meal periods, and was not required
8 to record rest periods. As to expenses reimbursement, Defendant contended that there was no failure
9 to pay for business expenses and any cell phone usage was merely convenient and voluntary such that
10 reimbursement was not legally required. Finally, Defendant could argue that the Supreme Court
11 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on
12 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argues that
13 based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if
14 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
15 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
16 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
17 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

18 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
19 to obtain a certified class and maintain the certified class through trial, and thereby not recover on
20 behalf of any employees other than himself. At the time of the mediation, Defendant forcefully
21 opposed the propriety of class certification, arguing that individual issues precluded class certification.
22 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
23 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even
24 where the class has been certified. While other cases have approved class certification in wage and
25 hour claims, class certification in this action was hotly disputed and the maintenance of a certified class

26 _____
27 settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
28 Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

2 After arm's length negotiations between experienced and informed counsel, the Parties
3 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
4 \$960,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

11 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
12 (9th Cir. 2000)).

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

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

20 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
21 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
22 performed his duties admirably by working with Class Counsel for more than two years. At the time
23 of final approval, the Declaration of the Plaintiff will be submitted in support. Decl. Nordrehaug at ¶27.
24 At this stage, the requested service award of \$10,000 is well within the accepted range of awards for
25 purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS
26 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
27 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
28 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*,
2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six
plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. Jan.
27 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in

enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

Plaintiff contends that the proposed settlement meet all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should

1 conditionally certify the Class for settlement purposes only, defined as follows:

2 All individuals who were employed by Defendant in California and classified as hourly,
3 non-exempt employees at any time during the Class Period.

4 (Agreement at ¶ 1.5.)

5 The Class Period is from July 22, 2017 through October 28, 2022. (Agreement at ¶ 1.13.)

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

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

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

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

15 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
16 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
17 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
18 settlement only. (Agreement at ¶ 2.9.)

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

20 Plaintiff brings this action on behalf of a Class of hourly, non-exempt employees of Defendant
21 during the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
22 members can readily be determined through examination of Defendant’s files. Given that the Class
23 consists of 647 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
24 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
25 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
26 Here, Plaintiff asserts that the 647 current and former employees that comprise the Class can be
27 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.
28 Nordrehaug at ¶30.

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

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

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

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

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

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

1 In the Action, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like
2 every other member of the Class, were employed by Defendant as an hourly, non-exempt employee,
3 and, like every other member of the Class, was subject to the same employment practices. Plaintiff,
4 like every other member of the Class, also claims owed compensation as a result of the Defendant's
5 uniform company policies and practices. Thus, the claims of Plaintiff and the members of the Class
6 arise from the same course of conduct by Defendant, involve the same issues, and are based on the
7 same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the
8 typicality requirement is met as to the common issues presented in this case. Defendant does not
9 oppose a finding of typicality for purposes of this Settlement only.

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

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

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

15 The Court has broad discretion in approving a practical notice program. The Parties have
16 agreed upon procedures by which the Class Members will be provided with written notice of the
17 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
18 with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
19 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
20 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
21 current mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the
22 Class Notice will be included in the mailing. (Agreement at ¶ 1.11.)

23 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
24 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
25 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
26 impact on the rights of the Class Members if they do not opt out, including a description of the
27 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
28 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
request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

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

11 **VII. CONCLUSION**

12 Plaintiff respectfully request that the Court preliminarily approve the proposed settlement and
13 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
14 approval hearing for the proposed date of February 16, 2024, which is a date that is at least one hundred
15 twenty (120) days from the date of Preliminary Approval.

16 Dated: July 28, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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