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

KEELAIN GONZALEZ, on behalf of
himself and on behalf of all persons
similarly situated, and on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

PACIFIC WESTERN BANK, a
California Corporation; DOES 1 through
50, inclusive,

Defendants.

CASE No. **CIVSB2127657**
[Related Case: CIVSB2127696]

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

Hearing Date: January 4, 2023
Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn
Dept.: S26

Action Filed: September 29, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Keelain Gonzalez (“Plaintiff”) respectfully submits this memorandum in support of
3 the unopposed motion for preliminary approval of the proposed class action settlement with Defendant
4 Pacific Western Bank (“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 are or previously were employed by
7 Defendant Pacific Western Bank in California who were classified as hourly, non-exempt employees
8 at any time during the Class Period”, which is from October 1, 2018 through November 3, 2022; (3)
9 provisionally appointing Plaintiff as the representative of the Class; (4) provisionally appointing
10 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
11 Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and method for providing class-
12 wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing
13 ILYM Group as Administrator, and (8) scheduling a final approval hearing date to consider Plaintiff’s
14 motion for final approval of the settlement and entry of the Judgment, and Plaintiff’s motion for
15 approval of attorneys’ fees and expenses. Plaintiff and Defendant (collectively the “Parties”) have
16 reached a full and final settlement of the above-captioned action, which is embodied in the Class Action
17 and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the
18 fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
19 Nordrehaug”), served and filed herewith. The form of the Agreement is based upon the Los Angeles
20 County Superior Court model form for a class and PAGA settlement.

21 As consideration for this Settlement, the Gross Settlement Amount is Two Million Six Hundred
22 Thousand Dollars (\$2,600,000) (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, consisting of all
25 payments to Class Members from the Net Settlement Amount, and includes (a) the costs of
26 administration of the settlement, (b) all attorneys’ fees and costs, (c) Class Representative Service

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

1 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 Defendant. (Id.) The Settlement is all-in with no reversion to
4 Defendant and no need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

5 Pursuant to the Court's instructions, the following is a table of the key financial terms of the
6 Settlement and the proposed deductions:

7 **\$2,600,000** (Gross Settlement Amount)
8 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
9 - \$22,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
10 - \$866,666 (Class Counsel Fees Payment - not to exceed amount)
11 - \$60,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
12 - \$25,000 (Settlement Administration Expenses - not to exceed amount)
13 **\$1,616,334** (Net Settlement Amount)

14 Based upon 1,415 Class Members who collectively worked 126,471 work weeks, the Net Settlement
15 Amount provides an average recovery of \$1,142 per Class Member and a recovery of \$12.78 per work
16 week. Decl. Nordrehaug at ¶6. Additional information requested by the Court's instructions are set
17 forth in the Decl. Nordrehaug at ¶¶ 33-38.

18 On July 28, 2022, the Parties participated in an all-day mediation session presided over by Louis
19 Marlin, a respected jurist and experienced mediator of wage and hour class actions. The Parties agreed
20 on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the
21 form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable
22 and adequate, and should be preliminarily approved because there is a substantial monetary payment,
23 and there are significant litigation and class-certification risks. Therefore, Plaintiff respectfully requests
24 that this Court grant preliminary approval of the Agreement and enter the proposed order submitted
25 herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Two Million Six Hundred Thousand Dollars (\$2,600,000).
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 (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendant's share of payroll
2 taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
3 Defendant. (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.) Thereafter, the distribution of Individual Class
6 Payments to Participating Class Members shall be made by the Administrator within fourteen (14) days
7 after Defendant funds the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

19 Class Members may choose to opt-out of the Settlement by following the directions in the Class
20 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
21 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
22 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
23 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
24 subject to the release of the PAGA Released Claims regardless of their request for exclusion.
25 (Agreement at ¶ 6.3.) Finally, the Notice will advise the Class Members of their right to object to the
26 Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug
27 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). (Agreement at ¶ 5.4.)
6 Decl. Nordrehaug at ¶19.

7 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
8 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
9 administration in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

10 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
11 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
12 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
13 Litigation Expenses Payment in an amount not to exceed \$22,000. (Agreement at ¶ 3.2(b).) Subject
14 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
15 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

16 Subject to Court approval, Sixty Thousand Dollars (\$60,000) will be paid from the Gross
17 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
18 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
19 the PAGA Payment shall be allocated as follows: 75% (\$45,000) shall be allocated to the Labor
20 Workforce Development Agency ("LWDA") as its share of the civil penalties and and 25% (\$15,000)
21 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
22 number of their respective pay periods worked during the PAGA Period. (Agreement at ¶ 3.2(d).) As
23 set forth in the accompany proof of service, the LWDA has been served with this motion and the
24 Agreement. Decl. Nordrehaug at ¶22.

25 **III. CASE BACKGROUND**

26 The description of the case and claims, along with the procedural history is set forth in the
27 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
28 exchange of documents and information in connection with the Action over more than a year which

permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on July 28, 2022 with Louis Marlin, which after arms' length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are 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 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
2 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
3 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
4 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
5 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
6 valuable benefits to the class . . . that were 'particularly valuable in light of the risks plaintiff would have
7 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
8 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
9 settlement is given to the class members and a final settlement hearing is held by the Court.

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

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

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

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 has 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 Louis Marlin, 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 to Plaintiff and Class Counsel payroll and employment data and
14 other information regarding the Class Members, various internal documents, and other compensation
15 and employment-related materials. Class Counsel analyzed the data with the assistance of damages
16 expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The final
17 settlement terms were negotiated and set forth in the Agreement now presented for this Court's
18 approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel believe that this
19 Settlement is fair, reasonable and adequate.

20 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
21 Two Million Six Hundred Thousand Dollars (\$2,600,000). The Settlement is all-in with no reversion
22 to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

25 ³ The release applicable to the Class is appropriately tethered to allegations in the Action and the
26 "Released Class Claims" are defined as "all class claims pled or could have been pled based on the
27 factual allegations contained in the Operative Complaint which occurred during the Class Period, and
28 expressly excluding all other claims, including claims for vested benefits, wrongful termination,
unemployment insurance, disability, social security, workers' compensation, and class claims outside
of the Class Period." (Agreement at ¶ 1.38.)

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 Defendant 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 Defendant, 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 Defendant 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).) After the proposed

1 deductions are made, the Net Settlement Amount provides an average recovery of \$1,142 per Class
2 Member and \$12.78 per work week. Decl. Nordrehaug, ¶6.

3 The calculations to compensate for the amount due for the Class at the time of the mediation
4 were calculated by Berger Consulting, Plaintiff's damage expert. As to the Class whose claims are at
5 issue in this Action, Plaintiff used the expert to analyze the data and determine the potential unpaid
6 wages for the employees. The maximum potential damages were calculated to be \$141,966 for the
7 alleged unpaid wages due to the regular rate calculation, \$8,522 for the alleged unpaid meal premiums
8 due to the regular rate calculation, \$45,334 for alleged unpaid sick pay due to the regular rate
9 calculation, \$4,284,995 for alleged meal period damages based upon a 25% violation rate, \$4,420,961
10 for alleged rest period damages based upon the same 25% violation rate, \$717,024 for alleged unpaid
11 off-the-clock work, \$346,453 for alleged time rounding deficiencies, \$346,580 for alleged
12 unreimbursed business expenses. . Decl. Nordrehaug, ¶24. As a result, the total damage valuation was
13 therefore calculated that Defendant was subject to a maximum damage claim in the amount of
14 \$10,311,835. As to potential penalties, Plaintiff calculated that wage statement penalties were a
15 maximum of \$2,685,000 and potential waiting time penalties were \$2,591,802. Defendant vigorously
16 disputed Plaintiff's calculations and exposure theories. Decl. Nordrehaug, ¶6.

17 Consequently, the Gross Settlement Amount of \$2,600,000 represents more than 25% 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
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27 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
28 Plaintiff has 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.

1 defenses asserted by Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this
2 litigation has been met. Decl. Nordrehaug, ¶6.

3 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
5 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
6 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
7 work time was paid for and that the regular rate was properly calculated when paying wages.
8 Defendant contend that their meal and rest period policies fully complied with California law and that
9 Defendant's timekeeping system recorded meal periods, and was not required to record rest periods.
10 As to expenses reimbursement, Defendant contended that it did not fail to pay for business expenses
11 and any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
12 required. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*,
13 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to
14 the meal and rest period claims. Defendant also argues that based on their facially lawful practices,
15 they acted in good faith and without willfulness, which if accepted would negate the claims for waiting
16 time penalties and/or inaccurate wage statements. If successful, Defendant's defenses could eliminate
17 or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could be
18 overcome, Defendant maintains these defenses have merit and therefore present a serious risk to
19 recovery by the Class. Decl. Nordrehaug, ¶ 24.

22 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
26 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
27 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
28 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
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
2 to maintain a certified class through trial or demonstrate that the PAGA claim is manageable, and
3 thereby not recover on behalf of any employees other than himself. At the time of the mediation,
4 Defendant continued to forcefully oppose the propriety of class certification, arguing that individual
5 issues precluded such findings. Further, as demonstrated by the California Supreme Court decision in
6 *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for
7 a class-wide recovery even where the class has been certified. While other cases have approved class
8 certification in wage and hour claims, class certification in this action was hotly disputed and the
9 maintenance of a certified class through trial was by no means a foregone conclusion. Decl.
10 Nordrehaug, ¶ 25.

11 After arm's length negotiations between experienced and informed counsel, the Parties
12 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
13 \$2,600,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

20 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
21 (9th Cir. 2000)).

22 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 23 **Class Representatives or Segments Of The Class**

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

Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
performed their duties admirably by working with Class Counsel for more than year. The Declaration

1 of Plaintiff Gonzalez is submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the
2 requested service award of \$10,000 is well within the accepted range of awards for purposes of
3 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
4 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
5 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
6 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
7 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
8 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
9 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
10 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
11 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
12 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
13 all employees. 2007 WL 221862 at *16-17.

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

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

25 Based on the foregoing data and their own independent investigation and evaluation, Class
26 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
27 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
28 of all known facts and circumstances, including the risk of significant delay, defenses asserted by

1 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
2 parties possessed sufficient information to make an informed judgment regarding the likelihood of
3 success on the merits and the results that could be obtained through further litigation. Decl.
4 Nordrehaug at ¶29.

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

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

10 All individuals who are or previously were employed by Defendant Pacific Western
11 Bank in California who were classified as hourly, non-exempt employees at any time
during the Class Period.

12 (Agreement at ¶ 1.5.)

13 The Class Period is from October 1, 2018 through November 3, 2022. (Agreement at ¶ 1.13.)

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

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

18 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
19 of a common or general interest, of many persons, or when the parties are numerous,
and it is impracticable to bring them all before the court....” The party seeking
20 certification has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The
21 “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.

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

23 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
24 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
25 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
26 settlement only. (Agreement at ¶ 2.8.)

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

1 Plaintiff brings this action on behalf of a Class of hourly, non-exempt employees of Defendant
2 during the Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
3 members can readily be determined through examination of Defendant's files. Given that the Class
4 consists of 1,415 members, Plaintiff maintains that numerosity is clearly satisfied. *See Bowles v.*
5 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
6 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
7 Here, Plaintiff asserts that the 1,415 current and former employees that comprise the Class can be
8 identified based on Defendant's records and are sufficiently numerous for class certification. Decl.
9 Nordrehaug at ¶30.

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

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

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

22 Here, Plaintiff contends that common questions of law and fact are present, specifically the
23 common questions of whether Defendant's employment practices were lawful, whether Defendant
24 properly calculated the regular rate when paying wages, whether the Defendant failed to provide meal
25 and rest periods to Class Members, whether Class members were lawfully compensated for all hours
26 worked, whether Defendant failed to provide required expense reimbursement, and whether Class
27 Members are entitled to damages and penalties as a result of these practices. Plaintiff contends that
28 certification of this Class is appropriate because Defendant allegedly engaged in uniform practices with

1 respect to the Class Members. As a result, these common questions of liability could be answered on
2 a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate
3 but will not oppose such a finding for purposes of this Settlement only.

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

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

11 In the instant case, Plaintiff contend that the typicality requirement is fully satisfied. Plaintiff,
12 like every other member of the Class, were employed by Defendant as hourly, non-exempt employees,
13 and, like every other member of the Class, was subject to the same employment practices. Plaintiff,
14 like every other member of the Class, also claims owed compensation as a result of the Defendant’s
15 uniform policies and practices. Thus, the claims of Plaintiff and the members of the Class arise from
16 the same course of conduct by Defendant, involve the same issues, and are based on the same legal
17 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff asserts that the typicality
18 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
19 of typicality for purposes of this Settlement only.

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

21 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
22 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
23 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
24 met here. First, Plaintiff is well aware of his duties as the representative of the Class and has actively
25 participated in the prosecution of this case to date. Plaintiff effectively communicated with Class
26 Counsel, provided documents and information to Class Counsel, and participated in the investigation
27 and resolution of the Action. The personal involvement of the Plaintiff was essential to the prosecution
28 of the Action and the monetary settlement reached. Second, Plaintiff retained competent counsel who

1 are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31.
2 Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both the
3 Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.
4 Under such circumstances, there can be no conflicts of interest, and adequacy of representation is
5 satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant
6 disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of
7 this Settlement only.

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

9 To certify a class, the Court must also determine that a class action is superior to other available
10 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
11 common issues will reduce litigation costs and promote greater efficiency, a class action may be
12 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
13 1996). As courts have previously observed:

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

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

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

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

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

1 current mailing address information available. (Agreement at ¶ 8.4(b).)

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

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

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

20 VII. CONCLUSION

21 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
22 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
23 fairness hearing for a date that is one hundred twenty (120) days from the date of Preliminary Approval.

24 Dated: December 7, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

25
26 By: 

Kyle Nordrehaug

Attorney for Plaintiff
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