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

AL-JERONE GREEN, TIFFANY
MANJARES and DOANYA PUCCINI,
individuals, on behalf of themselves and
on behalf of all persons similarly
situated,

Plaintiff,

vs.

FIVE KEYS SCHOOLS AND
PROGRAMS, a California Corporation, and
DOES 1 through 50, inclusive,

Defendants.

AL-JERONE GREEN, TIFFANY
MANJARES and DOANYA PUCCINI, on
behalf of the State of California, as private
attorney generals

Plaintiff,

vs.

FIVE KEYS SCHOOLS AND
PROGRAMS, a California Corporation, and
DOES 1 through 50, inclusive,
Defendants.

Case No. CGC-21-596165

(Consolidated with Case No. CGC-21-596167)

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

Hearing Date: March 29, 2023
Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept: 302

Action Filed: October 20, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Al-Jerone Green, Tiffany Manjares, and Doanya Puccini (“Plaintiffs”) respectfully
3 submit this memorandum in support of the unopposed motion for preliminary approval of the proposed
4 class action settlement with Defendant Five Keys Schools and Programs (“Defendant”), and seeks entry
5 of an order: (1) preliminarily approving the proposed settlement of this class action with Defendant;
6 (2) for settlement purposes only, conditionally certifying the Class, which is comprised of “all
7 individuals who are or previously were employed by Defendant in California who were classified as
8 hourly, non-exempt employees at any time during the Class Period” of October 20, 2017 through
9 August 11, 2022; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4)
10 provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Jeffrey S.
11 Herman, and Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel
12 for the Class; (5) approving the form and method for providing class-wide notice; (6) directing that
13 notice of the proposed settlement be given to the class; (7) appointing ILYM Group as Settlement
14 Administrator, and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion for final
15 approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys’
16 fees and expenses. Plaintiffs and Defendant (collectively the “Parties”) have reached a full and final
17 settlement of the above-captioned action, which is embodied in the Class Action Settlement Agreement
18 ("Agreement") filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
19 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

20 As consideration for this Settlement, the Gross Settlement Amount is Two Million Four
21 Hundred Fifty Thousand Dollars (\$2,450,000.00) to be paid by Defendant, as set forth in the
22 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
23 Parties and will be made in full and final settlement of the Released Class Claims. The Gross
24 Settlement Amount includes all payments of Settlement Shares to the Participating Class Members,
25 Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses
26 Payment, Class Representative Service Payments, and the PAGA Payment. The Gross Settlement
27

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

1 Amount does not include the employer's share of payroll taxes which will be separately paid by
2 Defendant. The Settlement is all-in with no reversion to Defendant and no need to submit a claim form.
3 Decl. Nordrehaug at ¶3.

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

6 **\$2,450,000** (Gross Settlement Amount)
- \$30,000 (Plaintiffs' proposed service awards - not to exceed \$10,000 each)
7 - \$17,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$816,666 (Class Counsel Fees Payment - not to exceed amount)
8 - \$50,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- \$25,000 (Administration Expenses Payment - not to exceed amount)
9 **\$1,511,334** (Net Settlement Amount)

10 Based upon 2,003 Class Members who collectively worked 91,952 work weeks, the Gross Settlement
11 Amount provides an average value of \$1,223 per Class Member and \$26 per work week, and after
12 deductions, the Net Settlement Amount provides an average recovery of \$754 per Class Member and
13 \$16 per work week. Decl. Nordrehaug at ¶6.

14 On May 13, 2022, the Parties participated in an all-day mediation session presided over by
15 Louis Marlin, Esq., a respected and experienced mediator of wage and hour class actions. Following
16 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
17 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
18 substantial monetary payment, and there are substantial litigation and class-certification risks.
19 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
20 and enter the proposed order submitted herewith.

21 **II. DESCRIPTION OF THE SETTLEMENT**

22 The Gross Settlement Amount is Two Million Four Hundred Fifty Thousand Dollars
23 (\$2,450,000.00). (Agreement at ¶ I(19).) Under the Settlement, the Gross Settlement Amount consists
24 of the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees
25 Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses;
26 (4) Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Payment. (Agreement
27 at ¶ I(19).) The Gross Settlement Amount does not include Defendant's share of payroll taxes.
28 (Agreement at ¶ III(39).) The Gross Settlement Amount shall be all-in with no reversion to Defendant.

1 (Agreement at ¶ III(39).) Decl. Nordrehaug at ¶15.

2 Defendant shall fund the Gross Settlement Amount within fifteen (15) days of the Effective
3 Date. (Agreement at ¶ III(46).) The Settlement Shares to Participating Class Members will be mailed
4 by the Settlement Administrator fifteen (15) days after Defendant fully funds the Gross Settlement
5 Amount. (Agreement at ¶ III(46).) Decl. Nordrehaug at ¶16.

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

18 Class Members may choose to opt-out of the Settlement by following the directions in the Class
19 Notice. (Agreement at ¶ III(43)(c), Ex. A.) All Class Members who do not "opt out" will be deemed
20 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
21 Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their allocation
22 of the PAGA Payment, respectively, and will remain bound by the release of the Released PAGA
23 Claims, regardless of their request for exclusion. (Agreement at ¶ III(43)(c)(iii).) Finally, the Class
24 Notice will also advise the Class Members of their right to object to the Settlement and/or dispute their
25 workweeks. (Agreement at ¶ III(43)(c), Ex. A.) Decl. Nordrehaug at ¶18.

26 A Participating Class Member must cash his or her Settlement Share check within 180 days
27 after it is mailed. (Agreement at ¶ III(47).) The Settlement Administrator will send a reminder to
28 Participating Class Members who have not cashed their checks 60 days before the expiration date.

(Agreement at ¶ III(47).) Any settlement checks not cashed within 180 days will be voided and any funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of the individual who failed to cash their check. (Agreement at ¶ III(47).) Decl. Nordrehaug at ¶19.

The Parties have agreed to use ILYM Group as the Settlement Administrator. (Agreement at ¶ III(42).) From the Gross Settlement Amount, the Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed \$25,000. (Agreement at ¶ III(40)(d).) Decl. Nordrehaug at ¶20.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ III(40)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed \$17,000. (Agreement at ¶ III(40)(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000 to each of the Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ III(40)(a).) Decl. Nordrehaug at ¶21.

The Parties will seek approval from the Court for the PAGA Payment of \$50,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$37,500) to the LWDA as the LWDA's share of the PAGA Payment pursuant to PAGA and 25% (\$12,500) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶ III(40)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement at ¶ III(40)(c).) As set forth in the accompany proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated

1 in mediation on May 13, 2022 with Louis Marlin, Esq., which after arm's length negotiations, resulted
2 in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

19 The primary question presented on an application for preliminary approval of a proposed class
20 action settlement is whether the proposed settlement is "within the range of possible approval."
21 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
22 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
23 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
24 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is

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

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

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

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

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

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

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

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

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

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

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

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

25 This settlement is the result of extensive and hard-fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
27 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
28 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released

1 Class Claims of the Class in accordance with this Settlement.³

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

10 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
11 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
12 for the mediation, Defendant provided Class Counsel with necessary information for the members of
13 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs
14 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
15 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
16 agreed to this Settlement. The final settlement terms were negotiated and set forth in the Agreement
17 now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class
18 Counsel believe that this Settlement is fair, reasonable and adequate.

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant
20 is Two Million Four Hundred Fifty Thousand Dollars (\$2,450,000.00). The Settlement is all-in with
21 no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

22 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
23 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
24

25 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
26 Claims" are "any and all Class claims pled or could have been pled based on the factual allegations
27 contained in the operative complaint which occurred during the Class Period, and expressly excluding
28 all other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
disability, social security, and workers' compensation, and claims outside of the Class Period".
(Agreement at ¶ III(49)(a).)

1 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
2 access to necessary information for the Class. In addition, Class Counsel previously negotiated
3 settlements with other employers in actions involving nearly identical issues and analogous defenses.
4 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
5 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
6 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
7 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
8 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

21 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within** 22 **the Range for Approval**

23 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
24 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
25 receive payment according to the same formula. (Agreement at ¶ III(41)(b).) For the 2,003 Class
26 members who worked 91,952 work weeks, the Gross Settlement Amount provides an average value
27 of \$1,223 per Class Member and \$26 per work week, and after deductions, the Net Settlement Amount
28 provides an average recovery of \$754 per Class Member and \$16 per work week. Decl. Nordrehaug,

¶6.

The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for putative class members and determined the potential maximum damages for the class claims. For the Class, Plaintiffs evaluated that the claim for unpaid wages due to the miscalculation of the regular rate was potentially \$739,992, the alleged unpaid wages due to Ferra miscalculation as to sick pay and meal periods was \$193,382, the maximum potential meal period damages, after deducting meal premiums paid by Defendant, wages were estimated to be \$233,330, the maximum potential rest period damages were estimated to be \$402,511, the maximum potential damages for off the clock work were estimated to be \$664,566, and the maximum potential damages for failure to provide expense reimbursement for were calculated to be \$934,400. In total, the damages for the Class were calculated to have a maximum potential total value of \$3,168,181. In addition, Plaintiffs calculated that the maximum value of the potential waiting time penalties were between \$2,707,502 and \$4,605,866, depending on the predicate violation, and the maximum value of the potential wage statement penalties were \$2,822,200. These wage statement and waiting time penalties claims potentially have a much smaller value or no value, even if damages were awarded, to the extent that they are only derivative of the rest break claims.⁴ Decl. Nordrehaug, ¶6.

Consequently, the Gross Settlement Amount represents more than 77% of the value of the

⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiffs recognized that these claims were subject to various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due."). Additionally, at the time of mediation, Courts had held that violations of the meal and rest period regulations, which require payment of a "premium wage" for each improper meal period, do **not** give rise to claims under sections 203 and 226. *See e.g. Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). As a result, the viability of Plaintiffs' claims on these theories was uncertain at the time the settlement was negotiated, even though the Supreme Court subsequently ruled on May 23, 2022 that meal and rest period violations could give rise to a claim under Section 203.

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

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

21
22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
23 the PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the
Decl. Nordrehaug at ¶ 33.

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

1 Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit
2 and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

3 There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable
4 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
5 Defendant argued that the individual experience of each putative class member varied with respect to
6 the claims. Defendant could also contest class certification by arguing injury and good faith were case
7 by case determinations that precluded class certification. Plaintiffs are aware of other cases where class
8 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
9 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
10 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
11 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
12 class has been certified. While other cases have approved class certification in wage and hour claims,
13 class certification in this action would have been hotly disputed and was by no means a foregone
14 conclusion. Decl. Nordrehaug, ¶ 25.

15 After arm's length negotiations between experienced and informed counsel, the Parties
16 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
17 \$2,450,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

24 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
25 (9th Cir. 2000)).

26 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 27 **Class Representatives or Segments Of The Class**

28 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
Members are all determined under a neutral methodology. Each Participating Class Member will
receive the same opportunity to participate in and receive payment through a neutral formula that is

1 based upon the weeks worked by that individual. Decl. Nordrehaug, ¶4.

2 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
3 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(40)(a).)
4 Plaintiffs performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
5 Plaintiffs will present detailed declarations addressing their work and service at the time of final
6 approval. For purposes of this preliminary approval stage, the requested service award of \$10,000 is
7 well within the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier*
8 *1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average
9 class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
10 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was \$375);
11 *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding
12 \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007
13 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and
14 a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded
15 to class representatives to compensate the employees for the time and effort expended on the case, for
16 the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an
17 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

15 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
16 213 F.3d at 459).

17 Here, Class Counsel was in far better position to evaluate the fairness of this Settlement because
18 Class Counsel performed formal discovery and received all necessary information which was evaluated
19 with the assistance of an expert, and also performed independent investigations and due diligence to
20 confirm the accuracy of the information supplied by Defendant.

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

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

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

28 (Agreement at ¶ I(3).)

The "Class Period" is from October 20, 2017 through August 11, 2022. (Agreement at ¶ I(10).)

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

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

5 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
6 of a common or general interest, of many persons, or when the parties are numerous,
7 and it is impracticable to bring them all before the court....” The party seeking
8 certification has the burden to establish the existence of both an ascertainable class and
9 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.

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

11 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
12 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
13 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
14 settlement only. (Agreement at ¶ II(38).)

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

16 Plaintiffs bring this Action on behalf of a Class of individuals during the applicable Class
17 Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can
18 readily be determined through examination of Defendant’s files. Given that the Class consists of
19 approximately 2,003 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
20 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
21 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
22 Here, Plaintiffs assert that the 2,003 current and former employees that comprise the Class can be
23 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.
24 Nordrehaug at ¶30.

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

26 Predominance of common issues of law or fact does not require that the common issues be
27 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
28 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the

1 necessity for class members to individually establish eligibility and damages does not mean individual
2 fact questions predominate.” *Sav-On*, 34 Cal. 4th at 334.

3 Commonality exists if there is a predominant common legal question regarding how an
4 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
5 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
6 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
7 certification stage since the question is “essentially a procedural one that does not ask whether an action
8 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

9 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
10 common questions of whether Defendant properly paid for wages, whether the Defendant failed to
11 provide meal and rest periods to class members, whether class members were lawfully compensated
12 for all hours worked, whether Defendant failed to provide required expense reimbursement, and
13 whether Class Members are entitled to damages and penalties as a result of these practices. Decl.
14 Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose such
15 a finding for purposes of this Settlement only.

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

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

23 In the instant case, Plaintiffs contend that there can be little doubt that the typicality requirement
24 is satisfied. The Plaintiffs, like every other member of the Class, worked for Defendant as non-exempt
25 employee during the Class Period. Plaintiffs contend that, like every other member of the Class, they
26 were subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
27 Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same course of
28 conduct by the Defendant, involve the same employment policies and practices of Defendant, and are

1 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert
2 that the typicality requirement is met as to the common issues presented in this case. Defendant
3 disputes typicality but Defendant does not oppose a finding of typicality for purposes of this Settlement
4 only.

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

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

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

18 To certify a class, the Court must also determine that a class action is superior to other available
19 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
20 common issues will reduce litigation costs and promote greater efficiency, a class action may be
21 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
22 1996). As courts have previously observed:

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

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

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims

as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide to the Settlement Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ III(43)(b).) Within 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ III(43)(b).) The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Settlement Share for each of the Class Members; (v) the amount of attorneys’ fees and expenses to be sought; (vi) the amount of the Plaintiffs’ service award requests; and (vii) the anticipated expenses of the Settlement Administrator. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Notice is mailed to them to request exclusion (opt-out) or to submit a written objection. (Agreement at ¶ III(43)(c).) In the event of a re-mailing, this deadline will be extended by an additional 15 days. Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(43)(c).) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Settlement Share. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and

1 3.769(f).

2 **VII. CONCLUSION**

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

7 Dated: February 28, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

9 By: /s/ Kyle Nordrehaug
10 Kyle R. Nordrehaug, Esq.
Attorney for Plaintiffs