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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SALVADOR VENEGAS and
SERGIO LAINEZ, on behalf of
themselves and on behalf of all persons
similarly situated, and on behalf of the
State of California, as private attorney
generals,

Plaintiff,

vs.

WWF OPERATING COMPANY, LLC, a
Limited Liability Company; DANONE
NORTH AMERICA PUBLIC BENEFIT
CORPORATION, a Corporation;
DANONE US, LLC, a Limited Liability
Company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **21STCV20991**

[Consolidated with Case No. 21PSCV00643 and
Case No. 21PSCV01017]

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

Hearing Date: May 10, 2023
Hearing Time: 9:00 a.m.

Judge: Hon. Maren Nelson
Dept.: 17

Action Filed: June 4, 2021
Trial Date: Not set

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5 California Rules of Court, rule 3.766 18

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

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

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1 **I. INTRODUCTION**

2 Plaintiffs Salvador Venegas and Plaintiff Sergio Lainez (collectively, “Plaintiffs”) respectfully
3 submit this memorandum in support of the unopposed motion for preliminary approval of the proposed
4 class action settlement with Defendants WWF Operating Company, LLC, Danone North America
5 Public Benefit Corporation and Danone US, LLC (“Defendants”), and seeks entry of an order:
6 (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for
7 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
8 are or previously were employed by Defendants WWF Operating Company, LLC, Danone North
9 America Public Benefit Corporation and Danone US, LLC in California who were classified as hourly,
10 non-exempt employees at any time during the Class Period”, which is from June 4, 2017 through
11 August 5, 2022; (3) provisionally appointing Plaintiffs as the representative of the Class; (4)
12 provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of
13 Blumenthal Nordrehaug Bhowmik De Blouw LLP and Edwin Aiwasian, Arby Aiwasian, and Joanna
14 Ghosh of Lawyers for Justice, P.C. as Class Counsel; (5) approving the form and method for providing
15 class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7)
16 appointing ILYM Group as Administrator, and (8) scheduling a final approval hearing date to consider
17 Plaintiffs’ motion for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion
18 for approval of attorneys’ fees and expenses. Plaintiffs and Defendants (collectively the “Parties”) have
19 reached a full and final settlement of the above-captioned action, which is embodied in the Class Action
20 and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹ A copy of the
21 fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl.
22 Nordrehaug”), served and filed herewith. The form of the Agreement is based upon the Los Angeles
23 County Superior Court model form for a class and PAGA settlement, and a redline showing a
24 comparison to the model form is attached as Exhibit #2 to the Decl. Nordrehaug.

25 As consideration for this Settlement, the Gross Settlement Amount is One Million
26 Two-Hundred Fifty Thousand Dollars (\$1,250,000) (the “Gross Settlement Amount”) to be paid by

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

1 Defendants, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending
2 in the Action between the Parties and will be made in full and final settlement of the Released Class
3 Claims, consisting of all payments to Participating Class Members from the Net Settlement Amount,
4 and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class
5 Representative Service Payment, and (d) the PAGA Penalties payment to the LWDA and the Aggrieved
6 Employees. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include the employer's
7 share of payroll taxes which will be separately paid by Defendants. (Id.) The Settlement is all-in with
8 no reversion to Defendants and no need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

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

11 **\$1,250,000** (Gross Settlement Amount)
12 - \$20,000 (Plaintiffs' proposed service awards not to exceed \$10,000 each)
13 - \$53,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
14 - \$416,666 (Class Counsel Fees Payment - not to exceed amount)
15 - \$25,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
16 - \$15,000 (Settlement Administration Expenses - not to exceed amount)
17 **\$720,334** (Net Settlement Amount)

18 Based upon 337 Class Members who collectively worked 61,699 Workweeks, the Gross Settlement
19 Amount provides a value of \$3,709 per Class Member and \$20 per Workweek and the Net Settlement
20 Amount provides an average recovery of \$2,137 per Class Member and a recovery of \$11,67 per
21 Workweek.² Decl. Nordrehaug at ¶6.

22 On March 9, 2022, the Parties participated in an all-day mediation session presided over by
23 Tripper Ortman, a respected and experienced mediator of wage and hour class actions. The Parties
24 agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized
25 in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair,
26 reasonable and adequate, and should be preliminarily approved because there is a substantial monetary
27 payment, and there are significant litigation and class-certification risks. Therefore, Plaintiffs
28 respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed

² These preliminary figures are based upon the estimates in paragraph 4.1 of the Agreement. Defendants are providing a declaration to verify the final figures, which will be submitted along with any needed update to these figures.

order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is One Million Two-Hundred Fifty Thousand Dollars (\$1,250,000). (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 Payments to Plaintiffs; and (5) the PAGA Penalties. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

Within thirty (30) days of the Effective Date, Defendants shall deposit the Gross Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members along with the other Court-approved distributions shall be made by the Administrator within fifteen (15) days after Defendants fund the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

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

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed

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

8 A Participating Class Member must cash his or her Individual Class Payment check within 180
9 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
10 be voided and any funds from such uncashed checks will be paid to a Court-approved nonprofit
11 organization or foundation consistent with Code of Civil Procedure Section 384(b) ("Cy Pres
12 Recipient"). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

13 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
14 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
15 administration in an amount not to exceed \$15,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

16 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
17 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
18 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
19 Litigation Expenses Payment in an amount not to exceed \$53,000. (Agreement at ¶ 3.2(b).) Subject
20 to Court approval, the Agreement provides for a payment of no more than \$10,000 each to the two
21 Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug
22 at ¶21.

23 Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the
24 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
25 Labor Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code §
26 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$18,750) shall be allocated to the
27 Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and and 25%
28 (\$6,250) allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees

1 based on the number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
2 accompany proof of service, the LWDA has been served with this motion and the Agreement. Decl.
3 Nordrehaug at ¶22.

4 **III. CASE BACKGROUND**

5 The description of the case and claims, along with the procedural history is set forth in the
6 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
7 exchange of documents and information in connection with the Action over more than a year which
8 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
9 14. The Parties participated in mediation on March 9, 2022 with Tripper Ortman, which after arms'
10 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

11 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 12 **GRANT PRELIMINARY APPROVAL**

13 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
14 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
15 California "[p]ublic policy generally favors the compromise of complex class action litigation."
16 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
17 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
18 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
19 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
20 denied, 459 U.S. 1217 (1983)).

21 Preliminary approval is the first of three steps that comprise the approval procedure for
22 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
23 members. The third step is a final settlement approval hearing, at which evidence and argument
24 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
25 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
26 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

27 The primary question presented on an application for preliminary approval of a proposed class
28 action settlement is whether the proposed settlement is "within the range of possible approval."

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

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

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

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

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

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

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

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

25 If the proposed settlement appears to be the product of serious, informed, noncollusive
26 negotiations, has no obvious deficiencies, does not improperly grant preferential
27 treatment to class representatives or segments of the class, and falls within the range of
28 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.

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

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

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

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

10 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
11 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
12 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
13 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Edwin Awazian. The view
14 of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable
15 is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial

16 ⁴ The release applicable to the Class is appropriately tethered to allegations in the Action and the
17 "Released Class Claims" are defined as "all claims that were alleged, or reasonably could have been
18 alleged based upon the facts alleged, in the Operative Complaint which occurred during the Class
19 Period, including, any and all claims, actions, and causes of action, arising during the Class Period, for:
20 (1) failure to pay wages, including minimum wages, for all time worked pursuant to California Labor
21 Code sections 1194, 1197, and 1197.1 and the IWC Wage Orders; (2) failure to pay overtime wages
22 pursuant to California Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders; (3) failure
23 to provide meal periods pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage
24 Orders, or to properly provide meal period premium payments; (4) failure to provide rest periods
25 pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders, or to provide rest
26 period premium payments; (5) failure to pay all wages owed at termination pursuant to California Labor
27 Code sections 201-203 and the IWC Wage Orders; (6) failure to pay all wages in a timely manner
28 during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7)
failure to furnish accurate itemized wage statements pursuant to California Labor Code section 226(a)
and the IWC Wage Orders; (8) failure to reimburse all necessary business expenses pursuant to
California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (9) violations of
California Business & Professions Code sections 17200, et seq. Except as set forth in this Paragraph
6.2 of this Agreement, Participating Class Members do not release any other claims, including claims
for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or claims based on facts
occurring outside the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

1 court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the
2 involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal.
3 App. 4th at 1802.

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

13 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
14 is One Million Two-Hundred Fifty Thousand Dollars (\$1,250,000). The Settlement is all-in with no
15 reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

16 Class Counsel has conducted a investigation into the facts of the class action. Extensive formal
17 discovery was performed, which included several depositions and the production of more than ten
18 thousand pages of documents. Class Counsel engaged in a thorough review and analysis of the relevant
19 documents and data with the assistance of an expert. Accordingly, the agreement to settle did not occur
20 until Class Counsel possessed sufficient information to make an informed judgment regarding the
21 likelihood of success on the merits and the results that could be obtained through further litigation. In
22 addition, Class Counsel previously negotiated settlements with other employers in actions involving
23 nearly identical issues and analogous defenses. Based on the foregoing data and their own independent
24 investigation, evaluation and experience, Class Counsel believes that the settlement with Defendants
25 on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of
26 the Class in light of all known facts and circumstances, including the risk of significant delay, defenses
27 asserted by Defendants, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

28 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and

1 trying this Action against Defendants through possible appeals which could take several years. Class
2 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
3 class actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems
4 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
5 Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the
6 best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

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

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

14 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
15 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
16 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) After the proposed
17 deductions are made, based upon the preliminary figures, the Net Settlement Amount provides an
18 average recovery of \$2,137 per Class Member. Decl. Nordrehaug, ¶6.

19 The calculations to compensate for the amount due for the Class at the time of the mediation
20 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
21 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
22 wages for the employees. The maximum potential damages were calculated to be \$3,037 for the
23 alleged unpaid wages due to the regular rate calculation, \$3,879,793, for alleged meal period damages
24 based upon a 4.8% potential violation rate observed in the 176,032 shifts analyzed and after the
25 deduction for meal premiums paid, \$3,974,722 for alleged rest period damages based upon the same
26 4.8% violation rate, \$870,052 for alleged unpaid off-the-clock work, \$132,562 for alleged unreimbursed
27 business expenses for personal cell phone at \$10 per month. As a result, the total damage valuation was
28 therefore calculated that Defendants were subject to a maximum damage claim in the amount of

1 \$8,860,166. As to potential penalties, Plaintiffs calculated that wage statement penalties were a
2 maximum of \$680,000 and potential waiting time penalties were between \$181,456 to \$742,320
3 depending on the predicate violation giving rise to the non-payment of wages. Defendants vigorously
4 disputed Plaintiffs' calculations and exposure theories. Decl. Nordrehaug, ¶6.

5 Consequently, the Gross Settlement Amount of \$1,250,000 represents more than 14% of the
6 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,⁵
7 Given the amount of the settlement as compared to the potential value of claims in this case and the
8 defenses asserted by Defendant, this settlement is fair and reasonable.⁶ Clearly, the goal of this
9 litigation has been met. Decl. Nordrehaug, ¶6.

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
13 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
14 argued that all work time was paid for and that the regular rate was properly calculated when paying
15 wages. Defendants contend that their meal and rest period policies fully complied with California law
16 and that Defendants' timekeeping system recorded meal periods, and was not required to record rest
17 periods. As to expenses reimbursement, Defendants contended that there was no failure to pay for
18 business expenses and any cell phone usage was merely convenient and voluntary such that
19

20 ⁵ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
21 Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The
22 PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

23 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
27 approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
28 *v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval
of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral*
v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
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 reimbursement was not legally required. Finally, Defendants could argue that the Supreme Court
2 decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on
3 liability, value, and class certifiability as to the meal and rest period claims. Defendants also argues
4 that based on their facially lawful practices, they acted in good faith and without willfulness, which if
5 accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If
6 successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class.
7 While Plaintiffs believe that these defenses could be overcome, Defendants maintain these defenses
8 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

9 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
10 to maintain a certified class through trial, and thereby not recover on behalf of any employees other
11 than themselves. At the time of the mediation, Defendants continued to forcefully oppose the propriety
12 of class certification, arguing that individual issues precluded class certification. Further, as
13 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
14 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class
15 has been certified. While other cases have approved class certification in wage and hour claims, class
16 certification in this action was hotly disputed and the maintenance of a certified class through trial was
17 by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

18 After arm's length negotiations between experienced and informed counsel, the Parties
19 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
20 \$1,250,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

25 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
26 (9th Cir. 2000)).

27 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 28 **Class Representatives or Segments Of The Class**

The relief provided in the Settlement will benefit all members of the Class. The Settlement does

1 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
2 Members are all determined under a neutral methodology. Each Participating Class Member will
3 receive the same opportunity to participate in and receive payment through a neutral formula that is
4 based upon the Workweeks for that individual. Decl. Nordrehaug, ¶4.

5 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
6 for their service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiffs
7 performed their duties admirably by working with Class Counsel for more than year. The Declaration
8 of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the
9 requested service award of \$10,000 is well within the accepted range of awards for purposes of
10 preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
11 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
12 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
13 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
14 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs
15 in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
16 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements).
17 As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
18 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
19 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
20 all employees. 2007 WL 221862 at *16-17.

21 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 22 **Preliminary Approval Of The Settlement**

23 The stage of the proceedings at which this Settlement was reached also militates in favor of
24 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
25 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
26 Members' claims before the Action were filed. Class Counsel conducted a review and analysis of the
27 relevant documents and data. Class Counsel was also experienced with the claims at issue here, as
28 Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the

1 agreement to settle did not occur until Class Counsel possessed sufficient information to make an
2 informed judgment regarding the likelihood of success on the merits and the results that could be
3 obtained through further litigation. Decl. Nordrehaug at ¶28.

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

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

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

17 All individuals who are or previously were employed by Defendants WWF Operating
18 Company, LLC, Danone North America Public Benefit Corporation and Danone US,
19 LLC in California who were classified as hourly, non-exempt employees at any time
during the Class Period.

20 (Agreement at ¶ 1.5.)

21 The Class Period is from June 4, 2017 through August 5, 2022. (Agreement at ¶ 1.13.)

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

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

26 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
27 of a common or general interest, of many persons, or when the parties are numerous,
28 and it is impracticable to bring them all before the court....” The party seeking
certification has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The
“community of interest” requirement embodies three factors: (1) predominant common

1 questions of law or fact; (2) class representatives with claims or defenses typical of the
2 class; and (3) class representatives who can adequately represent the class.

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

4 While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
5 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
6 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
7 settlement only. (Agreement at ¶ 2.10.)

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

9 Plaintiffs bring this action on behalf of a Class of hourly, non-exempt employees of Defendants
10 during the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
11 members can readily be determined through examination of Defendants' files. Given that the Class
12 consists of 337 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
13 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
14 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
15 Here, Plaintiffs assert that the 337 current and former employees that comprise the Class can be
16 identified based on Defendants' records and are sufficiently numerous for class certification. Decl.
17 Nordrehaug at ¶30.

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

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

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

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

3 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
4 common questions of whether Defendants’ employment practices were lawful, whether Defendants
5 properly calculated the regular rate when paying wages, whether the Defendants failed to provide meal
6 and rest periods to Class Members, whether Class members were lawfully compensated for all hours
7 worked, whether Defendants failed to provide required expense reimbursement, and whether Class
8 Members are entitled to damages and penalties as a result of these practices. Plaintiffs contends that
9 certification of this Class is appropriate because Defendants allegedly engaged in uniform practices
10 with respect to the Class Members. As a result, these common questions of liability could be answered
11 on a class wide basis. Decl. Nordrehaug, ¶30. Defendants dispute that common questions predominate
12 but will not oppose such a finding for purposes of this Settlement only.

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

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

20 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
21 every other member of the Class, were employed by Defendants as hourly, non-exempt employees, and,
22 like every other member of the Class, was subject to the same employment practices. Plaintiffs, like
23 every other member of the Class, also claims owed compensation as a result of the Defendants’ uniform
24 policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from the same
25 course of conduct by Defendants, involve the same issues, and are based on the same legal theories.
26 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs asserts that the typicality requirement
27 is met as to the common issues presented in this case. Defendants do not oppose a finding of typicality
28 for purposes of this Settlement only.

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

2 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs
3 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
4 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
5 met here. First, Plaintiffs are well aware of their duties as the representative of the Class and have
6 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
7 Class Counsel, provided documents and information to Class Counsel, and participated in the
8 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to
9 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
10 competent counsel who are experienced in employment class actions and who have no conflicts. Decl.
11 Nordrehaug at ¶ 31; Declaration of Edwin Awazian. Third, there is no antagonism between the
12 interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek
13 monetary relief under the same set of facts and legal theories. Under such circumstances, there can be
14 no conflicts of interest, and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S.
15 Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendants dispute that the adequacy requirement is
16 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).

1 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
2 as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, Defendants do not
3 dispute a finding of superiority in this action for purposes of this Settlement only.

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

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

13 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
14 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
15 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
16 impact on the rights of the Class Members if they do not opt out, including a description of the
17 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
18 to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the
19 amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiffs’ service award
20 request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

21 The Class Notice will state that the Class Members shall have forty-five (45) days from the date
22 that the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit
23 an objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object
24 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
25 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
26 out will automatically receive a payment of their Individual Class Payment. This notice program was
27 designed to meaningfully reach the Class Members and it advises them of all pertinent information
28 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice

1 satisfies the requirements of due process and is the best notice practicable under the circumstances and
2 complies with Rules of Court 3.766 and 3.769(f).

3 **VII. CONCLUSION**

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

7 Dated: January 18, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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