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

ANTHONY GUTIERREZ, as an individual
and on behalf of those similarly situated,

Plaintiff,

vs.

OPTIONS FOR YOUTH-VICTOR
VALLEY, INC., a California Corporation;
OPTIONS FOR YOUTH-ACTION, INC., a
California Corporation; OPTIONS FOR
YOUTH-CALIFORNIA, INC., a California
Corporation; OPTIONS FOR
YOUTH-DUARTE, INC., a California
Corporation; OPTIONS FOR
YOUTH-SAN BERNARDINO, INC., a
California Corporation; OPTIONS FOR
YOUTH-SAN GABRIEL, INC., a
California Corporation; OPTIONS FOR
YOUTH-SAN JUAN, INC., a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. CIVSB2132685

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

Hearing Date: January 18, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Jessica Morgan
Dept: 26

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1 **I. INTRODUCTION**

2 Plaintiff Anthony Gutierrez (“Plaintiff”) respectfully submits this memorandum in support of
3 the unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 Options For Youth-Victor Valley, Inc., Options For Youth-Acton, Inc., Options for Youth-California,
5 Inc., Options for Youth-Duarte, Inc., Options for Youth-San Bernardino, Inc., Options for Youth-San
6 Gabriel, Inc., and Options for Youth-San Juan, Inc. (“Defendants”), and seeks entry of an order:
7 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
8 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
9 were employed by Defendants in California and who were classified as a non-exempt employee at any
10 time during the Class Period” of September 23, 2020 through July 7, 2023; (3) provisionally appointing
11 Plaintiff as the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle
12 R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and
13 Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class;
14 (5) approving the form and method for providing class-wide notice; (6) directing that notice of the
15 proposed settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and
16 (8) scheduling a final approval hearing date proposed for June 19, 2024 (or as soon thereafter as is
17 available for the Court) to consider Plaintiff’s motion for final approval of the settlement and for
18 approval of attorneys’ fees and expenses. Plaintiff and Defendants (collectively the “Parties”) have
19 reached a full and final settlement of the above-captioned action, which is set forth 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, and the form of the Agreement is based on the Los Angeles
23 Superior Court model form for class and PAGA settlements.

24 As consideration for this Settlement, the Gross Settlement Amount is Seven Hundred Fifty
25 Thousand Dollars (\$750,000) to be paid by Defendants, as set forth in the Agreement. The Gross
26 Settlement Amount will settle all issues pending in the Action between the Parties and will be made

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

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

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

10 **\$750,000** (Gross Settlement Amount)

- 11 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 12 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 13 - \$250,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 14 - \$50,000 (PAGA Penalties - 75% to LWDA / 25% to Aggrieved Employees)
- 15 - \$20,000 (Administration Expenses Payment - not to exceed amount)

16 **\$395,000** (Net Settlement Amount)

17 Based upon 926 Class Members who collectively worked 22,545 Class Pay Periods (Agreement at ¶
18 4.1), the Gross Settlement Amount provides a value of \$809 per Class Member and \$33 per Workweek
19 and after deductions, the Net Settlement Amount provides an average recovery of \$426.56 per Class
20 Member and a recovery of \$17.52 per Workweek. The PAGA Penalties 25% allocation to the 926
21 Aggrieved Employees calculates to \$13.49 per Aggrieved Employee and \$0.55 per PAGA Pay Period.
22 Decl. Nordrehaug at ¶6.

23 On May 8, 2023, the Parties participated in an all-day mediation session presided over by Hon.
24 Carl J. West (Ret.), a respected jurist and experienced mediator of wage and hour class actions.
25 Following this mediation, the Parties reached an agreement to settle the Action based upon a mediator's
26 proposal. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be
27 preliminarily approved because there is a substantial monetary payment, and there are substantial
28 litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant
preliminary approval of the Agreement and enter the proposed order submitted herewith.

29 **II. DESCRIPTION OF THE SETTLEMENT**

30 The Gross Settlement Amount is Seven Hundred Fifty Thousand Dollars (\$750,000).

1 (Agreement at ¶ 1.25.) Under the Settlement, the Gross Settlement Amount consists of the following
2 elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class
3 Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses
4 Payment; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties
5 payment. (Agreement at ¶ 1.25.) The Gross Settlement Amount does not include Defendants' share
6 of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion
7 to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

8 Within fifteen (15) days of the Effective Date, Defendants shall deposit the Gross Settlement
9 Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments
10 to Participating Class Members along with the other Court-approved distributions shall be made by the
11 Administrator within fourteen (14) days after Defendants fully fund the Gross Settlement Amount.
12 (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

13 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
14 amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
15 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
16 Administration Expenses Payment (called the "Net Settlement Amount") shall be allocated to Class
17 Members as their Individual Class Payments. (Agreement at ¶¶ 1.31 and 3.2.) From the Net Settlement
18 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
19 dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all
20 Participating Class Members during the Class Period and (b) multiplying the result by each
21 Participating Class Member's number of Class Pay Periods worked. (Agreement at ¶ 3.2(e).) Wclass
22 Pay Periods will initially be based on Defendants' records; however, Class Members will have the right
23 to challenge the number of Workweeks. Decl. Nordrehaug at ¶17.

24 Class Members may choose to opt-out of the Settlement by following the directions in the Class
25 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
26 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
27 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
28 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain

1 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
2 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
3 to object to the Settlement and/or dispute their pay periods. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
4 Decl. Nordrehaug at ¶18.

5 A Participating Class Member must cash his or her Individual Class Payment check within 180
6 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
7 be voided and any funds represented by such checks paid to the California Controller's Unclaimed
8 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
9 requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl.
10 Nordrehaug at ¶19.

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

14 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
15 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
16 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
17 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject
18 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
19 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

20 Subject to Court approval, \$50,000 will be paid from the Gross Settlement Amount for PAGA
21 penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, *et seq.*
22 ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall
23 be allocated as follows: 75% (\$37,500) shall be allocated to the Labor Workforce Development Agency
24 ("LWDA") as its share of the civil penalties and 25% (\$12,500) allocated to the Individual PAGA
25 Payments to be distributed to the Aggrieved Employees based on the number of their respective PAGA
26 Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompanying proof of service, the LWDA
27 has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

28 **III. CASE BACKGROUND**

1 The description of the case and claims, along with the procedural history, is set forth in the
2 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
3 exchange of documents and information in connection with the Action which permitted Class Counsel
4 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
5 in mediation on May 8, 2023 with Hon. Carl J. West (Ret.), which after arm's length negotiations,
6 resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

9 California "[p]ublic policy generally favors the compromise of complex class action litigation."
10 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
11 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
12 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
13 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
14 denied, 459 U.S. 1217 (1983)).

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

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

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

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

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

12 The approval of a proposed settlement of a class action suit is a matter within the broad
13 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
14 In considering a potential settlement for preliminary approval purposes, the trial court does not have
15 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
16 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
17 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
18 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.
19 Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical or
20 speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*, 688
21 F.2d at 625, 628.

22 With regard to class action settlements, the opinions of counsel should be given considerable
23 weight both because of counsel’s familiarity with this litigation and previous experience with cases
24 such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation
25 of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
26 F.R.D. 523, 528 (C.D. Cal. 2004).

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

28 A number of factors are to be considered in evaluating a settlement for purposes of preliminary

1 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
2 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
3 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
4 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
5 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists
6 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
7 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
9 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and
10 therefore the presumption applies.

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

13 This settlement is the result of extensive and hard-fought litigation as well as negotiations
14 before an experienced and well-respected mediator. Defendants have expressly denied and continue
15 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
16 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
17 Class Claims of the Class in accordance with this Settlement.³

18 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
19 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
20 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
21 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
22

23 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
24 Claims" are "any and all claims, demands, rights, liabilities, and causes of action that were or could
25 have been pleaded under local, state or federal law based on the facts alleged, or reasonably could have
26 been alleged based on the facts alleged, in the Operative Complaint against Defendants and the
27 Released Parties arising during the Class Period, including claims for (1) failure to pay
28 minimum/regular wages; (2) failure to pay overtime wages; (3) failure to comply with meal break laws;
(4) failure to comply with rest break laws; (5) failure to reimburse expenses; (6) failure to provide
accurate wage statements; (7) failure to pay wages timely; (8) failure to provide and maintain records;
(9) failure to pay sick pay; and (10) violation of the Business and Professions Code Section 17200. ." (Agreement at ¶ 6.2.)

1 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
2 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
3 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
4 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

5 The Parties attended an arms-length mediation session with Hon. Carl J. West a respected jurist
6 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
7 preparation for the mediation, Defendants provided Class Counsel with necessary information for the
8 members of the Class, including payroll data and data concerning the composition of the Class.
9 Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and
10 submitted a mediation brief and damage valuation to the Mediator. Following this all-day mediation,
11 the Parties agreed to this Settlement, which was memorialized in the form of a Memorandum of
12 Understanding. The final settlement terms were negotiated and set forth in the Agreement now
13 presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class Counsel
14 believe that this Settlement is fair, reasonable and adequate.

15 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants
16 is Seven Hundred Fifty Thousand Dollars (\$750,000). The Settlement is all-in with no reversion to
17 Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

18 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
19 the course of two years, Class Counsel diligently evaluated the Class Members' claims against
20 Defendants. Prior to the settlement negotiations, Defendants provided Class Counsel with access to
21 necessary information for the Class. In addition, Class Counsel previously negotiated settlements with
22 other employers in actions involving nearly identical issues and analogous defenses. Based on the
23 foregoing data and their own independent investigation, evaluation and experience, Class Counsel
24 believes that the settlement with Defendants on the terms set forth in the Agreement is fair, reasonable,
25 and adequate and is in the best interest of the Class in light of all known facts and circumstances,
26 including the risk of significant delay, defenses asserted by Defendants, and potential appellate issues.
27 Decl. Nordrehaug at ¶ 14.

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

1 this Action against Defendants and then litigating possible appeals which could take several years.
2 Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
3 complex class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent
4 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
5 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
6 is in the 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).) Based upon 926 Class
17 Members who collectively worked 22,545 Class Pay Periods (Agreement at ¶ 4.1), the Gross Settlement
18 Amount provides a value of \$809 per Class Member and \$33 per Workweek and after deductions, the
19 Net Settlement Amount provides an average recovery of \$426.56 per Class Member and a recovery of
20 \$17.52 per Workweek. Decl. Nordrehaug, ¶6.

21 The calculations to compensate for the amount due to the Class Members at the time this
22 Settlement was negotiated were calculated by Plaintiff’s expert, Berger Consulting, in advance of
23 mediation. Class Counsel analyzed the data for putative class members and determined the potential
24 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
25 wages due to alleged rounding was \$30,560, the maximum value of the claim for unpaid wages due to
26 the alleged miscalculation of the regular rate was \$16,508, the maximum value of the claim for unpaid
27 wages due to alleged off-the-clock work was \$1,242,265, the maximum potential damages for unpaid
28 meal premiums were estimated to be \$47,806 based upon a 1.7% violation rate and after deduction for

1 meal premiums paid, the maximum potential rest period damages were estimated to be \$67,924 based
2 upon the same 1.7% violation rate, and the maximum potential damages for failure to provide expense
3 reimbursement were calculated to be \$53,020. In total, the damages for the Class were calculated to
4 have a maximum potential total value of \$1,467,084. In addition, Plaintiff calculated that the maximum
5 value of the potential waiting time penalties were between \$185,868 and \$3,170,374, depending on the
6 predicate unpaid wage violation, and the maximum value of the potential wage statement penalties were
7 \$1,925,550.⁴ Decl. Nordrehaug, ¶6.

8 Consequently, the Gross Settlement Amount represents more than 51% of the potential
9 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
10 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
11 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
12 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
13 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

14 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
15 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
16

17 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
20 meal or rest periods or other wages were owed given Defendants' position that Plaintiff and Class
21 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
22 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
23 dispute as to whether and when the wages were due.").

24 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
25 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
26 Nordrehaug at ¶ 33.

27 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
28 approving settlement which represented "roughly one-sixth of the potential recovery"; *Stovall-Gusman*
v. W.W. Granger, Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial."); *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 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
2 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
3 argued that all work time was properly recorded and paid for and that there was no miscalculation of
4 the regular rate. Defendants argued that any rounding was facially neutral and therefore lawful. *See*
5 *See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901(2012) (holding rounding policies are
6 only lawful if they are consistently applied and, on average, favor neither overpayment nor
7 underpayment of wages); Defendants contend that its meal and rest period policies fully complied with
8 California law and Defendants did not fail to provide the opportunity for legally required meal and rest
9 breaks. As to expense reimbursement, Defendants contended that it did not fail to provide
10 reimbursement for necessary business expenses and that there were no such expenses that had not
11 already been reimbursed or that claimed expenses were incurred voluntarily and/or for the convenience
12 of employees and is therefore not required reimbursement. Defendants argued that the decisions in
13 *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal. 4th
14 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened
15 Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period claims.
16 Defendants also argue that based on their facially lawful practices, they acted in good faith and without
17 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
18 wage statements. If successful, Defendants' defenses could eliminate or substantially reduce any
19 recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendants
20 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
21 Nordrehaug, ¶ 24.

22 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
23 to obtain class certification and thereby not recover on behalf of any employees other than himself.
24 Defendants argued that the individual experience of each putative class member varied with respect to
25 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
26 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
27 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
28 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,

1 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
2 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
3 class has been certified. While other cases have approved class certification in wage and hour claims,
4 class certification in this action would have been hotly disputed and was by no means a foregone
5 conclusion. Decl. Nordrehaug, ¶ 25.

6 After arm's length negotiations between experienced and informed counsel, the Parties
7 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
8 \$750,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

15 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
16 (9th Cir. 2000)).

17 3. The Settlement Does Not Improperly Grant Preferential Treatment To 18 Class Representatives or Segments of The Class

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

24 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
25 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
26 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. A
27 declaration of the Plaintiff is presented herewith in support. For purposes of this preliminary approval
28 stage, the requested service award of \$10,000 is well within the accepted range of awards for purposes
of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
(E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v.*
Experian Info. Solutions, Inc., 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000

1 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*,
2 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in
3 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding
4 \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As explained
5 in *Glass*, service awards are routinely awarded to class representatives to compensate the employees
6 for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer
7 and retaliation therefrom, and to serve as an incentive to vindicate the statutory rights of all employees.
8 2007 WL 221862 at *16-17.

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

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

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

28 In *Glass*, the Northern District of California granted final approval of an overtime wage action

1 although in *Glass* no formal discovery had been conducted prior to the settlement:

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

6 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
7 213 F.3d at 459).

8 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
9 Class Counsel received a full production of documents through both formal and informal discovery,
10 received all necessary information which was evaluated with the assistance of an expert, and performed
11 independent investigations to confirm the accuracy of the information supplied by Defendant.

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

13 Plaintiff contends that the proposed settlement meets 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 were employed by Defendants in California and who were
18 classified as a non-exempt employee at any time during the Class Period.

19 (Agreement at ¶ 1.6.)

20 The "Class Period" is from September 23, 2020 through July 7, 2023. (Agreement at ¶ 1.15.)

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

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

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

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

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

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

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

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

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

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

27 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
28 common questions of whether Defendants' practices were lawful, whether Class members were

1 lawfully compensated for all hours worked, whether Defendants properly calculated wages, whether
2 the Defendants' alleged rounding practices were lawful, whether the Defendants failed to provide all
3 legally required meal and rest periods to class members, whether Defendants failed to provide required
4 expense reimbursement, and whether Class Members are entitled to damages and penalties as a result
5 of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that common questions predominate
6 but will not oppose such a finding for purposes of this Settlement only.

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

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

14 In the instant case, Plaintiff contends that there can be little doubt that the typicality requirement
15 is satisfied. The Plaintiff worked for Defendants as a non-exempt employee during the Class Period.
16 Plaintiff contends that, like every other member of the Class, he was subject to the same practices and
17 policies of Defendants and was subject to the same defenses. Thus, Plaintiff asserts that the claims of
18 the Plaintiff and the Class Members arise from the same course of conduct by the Defendants, involve
19 the same employment policies and practices of Defendants, and are based on the same legal theories.
20 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement
21 is met as to the common issues presented in this case. Defendants dispute typicality but Defendants
22 do not oppose a finding of typicality for purposes of this Settlement only.

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

24 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
25 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
26 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
27 met here. First, Plaintiff is well aware of his duties as the representative of the class and has actively
28 participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel,

1 provided documents to counsel and participated in the investigation and negotiations in the Action.
2 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
3 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
4 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
5 the same set of facts and legal theories. Defendants dispute that the adequacy requirement is satisfied
6 but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

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

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

24 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
25 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
26 upon procedures by which the Class Members will be provided with written notice of the Settlement
27 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
28 Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most

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

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

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

10 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
11 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit an
12 objection, which response Deadline shall be extended by 14 days in the event of a re-mailing.
13 (Agreement at ¶¶ 1.43, 8.5, 8.7.) Class Members shall be given the opportunity to object to the
14 Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
15 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
16 out will automatically receive a payment of their Individual Class Payment. This notice program was
17 designed to meaningfully reach the Class Members and it advises them of all pertinent information
18 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
19 satisfies the requirements of due process and is the best notice practicable under the circumstances and
20 complies with Rules of Court 3.766 and 3.769(f).

21 **VII. CONCLUSION**

22 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
23 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
24 fairness hearing for the proposed date of June 19, 2024

25 Dated: December 19, 2023 **BLUMENTHAL NORDREHAUG BHOWMIK**
26 **DE BLOUW LLP**

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