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

15 SIERRA STEELE and ELIJAH
16 WILKINSON, on behalf of the State of
17 California, as private attorneys general,
18 and as individuals, on behalf of
19 themselves and on behalf of all persons
20 similarly situated,

21 Plaintiffs,

22 vs.

23 LEGOLAND CALIFORNIA, LLC, a
24 Limited Liability Company; and DOES 1
25 through 50, inclusive,

26 Defendants.

Case No. 37-2021-00052868-CU-OE-CTL

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

Hearing Date: June 30, 2023
Hearing Time: 10:30 a.m.

Judge: Hon. Carolyn M. Caietti
Dept: 70

Action Filed: December 17, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Sierra Steele and Elijah Wilkinson (“Plaintiffs”) respectfully submit this memorandum
3 in support of the unopposed motion for preliminary approval of the proposed class action settlement
4 with Defendant LEGOLAND California, LLC (“Defendant”), and seek entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals
7 employed by Defendant in the State of California in a non-exempt position during the Class Period”
8 of December 17, 2017 through and including February 12, 2023 (excluding certain individuals who
9 signed a severance agreement during the Class Period and were not subsequently rehired by
10 Defendant); (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally
11 appointing Norman B. Blumenthal, Kyle R. Nordrehaug and Aparajit Bhowmik of Blumenthal
12 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and
13 method for providing class-wide notice; (6) directing that notice of the proposed settlement be given
14 to the Class; (7) appointing ILYM Group as Administrator, and (8) scheduling a final approval hearing
15 date for November 17, 2023 to consider Plaintiffs’ motion for final approval of the settlement and entry
16 of the Judgment, and Plaintiffs’ motion for approval of attorneys' fees and expenses. Plaintiffs and
17 Defendant (collectively the “Parties”) have reached a full and final settlement of the above-captioned
18 action, which is embodied in the Class Action and PAGA Settlement Agreement ("Agreement") filed
19 concurrently with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the
20 Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of the
21 Agreement is based upon the Los Angeles County Superior Court model form for a class and PAGA
22 settlement.

23 As consideration for this Settlement, the Gross Settlement Amount is Six Million Dollars and
24 Zero Cents (\$6,000,000.00) to be paid by Defendant, as set forth in the Agreement. The Gross
25 Settlement Amount will settle all issues pending in the Action between the Parties and will be made
26 in full and final settlement of the Released Class Claims in exchange for the payments to Participating
27

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

1 Class Members from the Net Settlement Amount, and includes (a) the costs of administration of the
2 settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payment, and (d) the
3 PAGA Settlement Amount to the LWDA and the Affected Employees. (Agreement at ¶ 1.22.) The
4 Gross Settlement Amount does not include the employer's share of payroll taxes which will be
5 separately paid by Defendant. (Id.) The Settlement is all-in with no reversion to Defendant and no
6 need to submit a claim form. (Id.) Decl. Nordrehaug at ¶3.

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

9 **\$6,000,000** (Gross Settlement Amount)
10 - \$20,000 (Plaintiffs' proposed Class Representative Service Payment
not to exceed \$10,000 each)
11 - \$40,000 (Class Counsel Litigation Costs - not to exceed amount)
12 - \$2,000,000 (Class Counsel Fees - not to exceed 1/3 of Gross Settlement Amount)
- \$200,000 (PAGA Settlement Amount - 75% to LWDA / 25% to Affected Employees)
- \$60,000 (Administration Expenses - not to exceed amount)
13 **\$3,680,000** (Net Settlement Amount)

14 Based upon an estimated 8,194 Class Members who collectively worked an estimated 329,026
15 Workweeks, the Gross Settlement Amount provides a value of \$732.24 per Class Member and \$18.23
16 per Workweek and after deductions the Net Settlement Amount provides an average recovery of
\$449.11 per Class Member and a recovery of \$11.18 per Workweek. Decl. Nordrehaug at ¶6.

17 On October 21, 2022, the Parties participated in an all-day mediation session presided over by
18 David A. Rotman, Esq., a respected and experienced mediator of wage and hour class actions. The
19 Parties did not settle at the October 21, 2022. However, on December 12, 2022, the Parties participated
20 in a second all-day mediation session presided over by Mr. Rotman. During this second day of
21 mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
22 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
23 substantial monetary payment, and there are substantial litigation and class-certification risks.
24 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
25 and enter the proposed order submitted herewith.

26 **II. DESCRIPTION OF THE SETTLEMENT**

27 The Gross Settlement Amount is Six Million Dollars (\$6,000,000). (Agreement at ¶ 1.22.)
28

1 Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment
2 of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees and Class
3 Counsel Litigation Costs; (3) Administration Expenses; (4) the Class Representative Service Payments
4 to Plaintiffs; and (5) the PAGA Settlement Amount. (Agreement at ¶ 1.22.) The Gross Settlement
5 Amount does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.5.) The Gross
6 Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.5.) Decl.
7 Nordrehaug at ¶15.

8 Within fourteen (14) days of the Effective Date, Defendant shall deposit the Gross Settlement
9 Amount and the amount of employer's share of payroll taxes with the Administrator. (Agreement at
10 ¶ 4.4.) The distribution of Individual Class Payments to Participating Class Members along with the
11 other Court-approved distributions shall be made by the Administrator within thirty (30) days of the
12 Effective Date. (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 Payments, Class Counsel Fees, Class Counsel Litigation Costs, and the Administration Expenses
16 (called the "Net Settlement Amount") shall be allocated to Participating Class Members as their
17 Individual Class Payments. (Agreement at ¶¶ 1.27 and 3.6.) From the Net Settlement Amount, the
18 Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the
19 Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members
20 during the Class Period and (ii) multiplying the result by each Participating Class Member's
21 Workweeks. (Agreement at ¶ 3.6(e).) Workweeks will be based on Defendant's records. However,
22 Class Members will have the right to challenge the number of Workweeks. Decl. Nordrehaug at ¶17.

23 Class Members may choose to opt out of the Settlement by following the directions in the Class
24 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
25 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
26 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Affected Employees, including those who
27 submit a Request for Exclusion, will still be paid their allocation of the PAGA Settlement Amount and
28 will remain subject to the release of the Released PAGA Claims regardless of their Request for

1 Exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members
2 of their right to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and
3 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

4 A Participating Class Member must cash his or her Individual Class Payment check within 180
5 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
6 be voided and any funds from such uncashed checks will be paid by the Administrator to a mutually
7 agreeable Court-approved nonprofit organization or foundation consistent with California Code of Civil
8 Procedure (“CCP”) section 384(b) (“Cy Pres Recipient”). The Parties have agreed to propose California
9 Alliance of Boys & Girls Clubs, Inc. (“Boys & Girls Clubs”), with the funds designated to be used in
10 California for the Boys & Girls Clubs’ Workforce Readiness program/job training, as the Cy Pres
11 Recipient. (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

12 Subject to Court approval, the Parties have agreed on ILYM Group to administer the Settlement
13 in this Action (“Administrator”). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
14 administration costs in an amount not to exceed \$60,000. (Agreement at ¶ 3.6(c).) Decl. Nordrehaug
15 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. (Agreement at ¶
18 3.6(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
19 Litigation Costs in an amount not to exceed \$40,000. (Agreement at ¶ 3.6(b).) Subject to Court
20 approval, the Agreement provides for a payment of no more than \$10,000 each to the Plaintiffs as the
21 Class Representative Service Payments. (Agreement at ¶ 3.6(a).) Decl. Nordrehaug at ¶21.

22 Subject to Court approval, Two Hundred Thousand Dollars (\$200,000) will be paid from the
23 Gross Settlement Amount for the PAGA Settlement Amount under the California Private Attorneys
24 General Act, Cal. Labor Code Section 2698, *et seq.* (“PAGA”). Pursuant to the express requirements
25 of Labor Code § 2699(i), the PAGA Settlement Amount shall be allocated as follows: 75% (\$150,000)
26 shall be allocated to the Labor and Workforce Development Agency (“LWDA”) as its share of the civil
27 penalties and 25% (\$50,000) allocated to the Individual PAGA Payments to be distributed to the
28 Affected Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶

3.6(d).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on October 21, 2022 and December 12, 2022 with David A. Rotman, Esq., which after arm's length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th

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

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

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

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
23 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

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

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

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

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

24 If the proposed settlement appears to be the product of serious, informed, noncollusive
25 negotiations, has no obvious deficiencies, does not improperly grant preferential
26 treatment to class representatives or segments of the class, and falls within the range of
27 possible approval, then the court should direct that notice be given to the class members
28 of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

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

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

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

4 This settlement is the result of extensive and hard-fought litigation as well as negotiations
5 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
6 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
7 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
8 Class Claims of the Class in accordance with this Settlement.³

9 Class Counsel are experienced and qualified to evaluate the Released Class Claims, the defenses
10 asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly

11 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
12 Claims" are "any and all claims, rights, demands, and liabilities of every nature and description,
13 whether known or unknown, suspected or unsuspected, arising under federal, state, or local law, that
14 were asserted or that could have been asserted based on the facts alleged in the initial and/or Operative
15 Complaint, that arose during the Class Period, including: (a) unlawful and unfair competition in
16 violation of California Business and Professions Code section 17200 et seq.; (b) failure to pay minimum
17 and overtime wages for all time worked in violation of California Labor Code sections 510, 1194, 1197,
18 1197.1, and 1198, including off-the-clock time spent (i) waiting for and submitting to loss prevention
19 inspections; (ii) waiting in line in order to pass through security checkpoints; (iii) waiting in line before
20 clocking in; and (iv) waiting in line for mandatory temperature checks; (c) failure to pay overtime
21 wages in violation of California Labor Code sections 510, 1194, and 1198, including but not limited
22 to failure to pay overtime wages at the correct regular rate of pay; (d) failure to provide meal periods
23 or pay meal period premiums in violation of California Labor Code sections 226.7 and 512 and the
24 applicable Industrial Welfare Commission ("IWC") Wage Order; (e) failure to authorize and permit rest
25 periods or pay rest period premiums in violation of California Labor Code section 226.7 and the
26 applicable IWC Wage Order; (f) failure to provide accurate itemized wage statements in violation of
27 California Labor Code section 226; (g) failure to pay all wages due upon termination of employment
28 in violation of California Labor Code sections 201-203; (h) failure to pay employees within 7 days of
the close of the payroll period in violation of California Labor Code section 204; (i) failure to pay all
sick pay due in violation of California Labor Code sections 201-203 and 246; (j) unlawful deductions
from compensation in violation of California Labor Code section 221; (k) failure to reimburse
employees for business expenses in violation of California Labor Code section 2802; (l) failure to pay
reporting time pay as required by the applicable IWC Wage Order; (m) attorneys' fees and costs
incurred to prosecute the Actions on behalf of Class Members; and (n) any other derivative remedies,
penalties, and interest available under the law based on the facts alleged in the Actions. The release of
Class claims will run from December 17, 2017 through February 12, 2023. Except as expressly set forth
in 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 ¶¶ 1.40 and 6.2.)

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

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

18 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
19 Six Million Dollars (\$6,000,000.00). The Settlement is all-in with no reversion to Defendant and no
20 need to submit a claim form. Decl. Nordrehaug at ¶ 3.

21 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
22 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
23 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
24 access to necessary information for the Class. In addition, Class Counsel previously negotiated
25 settlements with other employers in actions involving nearly identical issues and analogous defenses.
26 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
27 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
28 reasonable, and adequate and is in the best interest of the Class in light of all known facts and

1 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
2 appellate issues. Decl. Nordrehaug at ¶ 14.

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

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

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

17 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
18 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
19 receive payment according to the same formula. (Agreement at ¶ III(41)(b).) For the estimated 8,194
20 Class Members who collectively worked an estimated 329,026 Workweeks, the Gross Settlement
21 Amount provides a value of \$732.24 per Class Member and \$18.23 per Workweek and after deductions
22 the Net Settlement Amount provides an average recovery of \$449.11 per Class Member and a recovery
23 of \$11.18 per Workweek. Decl. Nordrehaug, ¶6.

24 The calculations to compensate for the amount due to the Class Members at the time this
25 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
26 mediation. For the individuals whose claims are at issue in this Action, Plaintiffs analyzed the data for
27 putative class members and determined the potential maximum damages for the class claims. For the
28 Class, Plaintiffs evaluated that the claim for unpaid wages due to the miscalculation of the regular rate

1 was potentially \$74,007; the allege unpaid wages due to *Ferra* miscalculation as to sick pay and meal
2 period premiums was \$124,267; the maximum potential meal period damages, after deducting meal
3 premiums paid by Defendant, were estimated to be \$292,382; the maximum potential rest period
4 damages, after deducting rest period premiums paid by Defendant, were estimated to be \$4,821,899;
5 the maximum potential damages for unpaid wages and off the clock work were estimated to be
6 \$2,713,389; and the maximum potential damages for failure to provide expense reimbursement were
7 calculated to be \$1,020,595. In total, the damages for the Class were calculated to have a maximum
8 potential total value of \$9,046,538. In addition, Plaintiffs calculated that the maximum value of the
9 potential waiting time penalties were between \$2,260,980 and \$17,417,414, depending on the predicate
10 violation, and the maximum value of the potential wage statement penalties were between \$3,782,550
11 and \$9,406,050, depending on the predicate violation.⁴ Decl. Nordrehaug, ¶6.

12 Consequently, the Gross Settlement Amount represents more than 66% of the value of the
13 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
14 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
15 both the risk of class certification and the risk of establishing class-wide liability on all claims. Given
16 the amount of the Settlement as compared to the potential value of the claims, the Settlement is most
17 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

18
19 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
20 226, at mediation Plaintiffs recognized that these claims were subject to additional defenses asserted
21 by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium
22 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs
23 were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
24 ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as
25 to whether and when the wages were due.").

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

⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
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.

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

19 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
20 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
21 Defendant argued that the individual experience of each putative class member varied with respect to
22 the claims. Defendant could also contest class certification by arguing injury and good faith were case
23 by case determinations that precluded class certification. Plaintiffs are aware of other cases where class
24 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
25 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
26 _____
27 Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
28 *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 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 \$6,000,000.00. 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 Plaintiffs 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 weeks worked by that individual. Decl. Nordrehaug, ¶4.

24 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
25 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.6(a).) Plaintiffs
26 performed their duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. Submitted
27 herewith are Plaintiffs' detailed declarations addressing their work and service in support of this
28 request. For purposes of this preliminary approval stage, the requested service award of \$10,000 to
each Plaintiff 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 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

13 Plaintiffs contend 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 employed by Defendant in the State of California in a non-exempt
18 position during the Class Period.

19 (Agreement at ¶ 1.5.)

20 The "Class Period" is from December 17, 2017 through and including February 12, 2023. (Agreement
21 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
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.

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

2 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements,
3 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
4 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
5 settlement only. (Agreement at ¶ 3.1.)

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

7 Plaintiffs bring this Action on behalf of a Class of individuals during the applicable Class
8 Period. Plaintiffs assert that all of these individuals are ascertainable because the Class members can
9 readily be determined through examination of Defendant's files. Given that the Class consists of an
10 estimated 8,194 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
11 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
12 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
13 Here, Plaintiffs assert that the estimated 8,194 current and former employees that comprise the Class
14 can be identified based on Defendant's records and are sufficiently numerous for class certification.
15 Decl. Nordrehaug at ¶30.

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

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

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

28 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the

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

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

8 The typicality requirement requires the Plaintiffs to demonstrate that the members of the Class
9 have the same or similar claims as the Plaintiffs. “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 this Action, Plaintiffs contend that there can be little doubt that the typicality requirement is
15 satisfied. The Plaintiffs, like every other member of the Class, worked for Defendant as non-exempt
16 employee during the Class Period. Plaintiffs contend that, like every other member of the Class, they
17 were subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
18 Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same course of
19 conduct by the Defendant, involve the same employment policies and practices of Defendant, and are
20 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert
21 that the typicality requirement is met as to the common issues presented in this case. Defendant
22 disputes typicality but Defendant does not oppose a finding of typicality for purposes of this Settlement
23 only.

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

25 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs
26 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
27 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
28 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have

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

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

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

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

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

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

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

25 The Court has broad discretion in approving a practical notice program. The Parties have
26 agreed upon procedures by which the Class Members will be provided with written notice of the
27 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
28 with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
containing the Class Data. (Agreement at ¶ 4.3.) Within 21 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 Plaintiffs’ requested Class
9 Representative Service Payments; and (vi) the anticipated expenses of the Administrator. Decl.
10 Nordrehaug at ¶32.

11 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
12 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit an
13 objection. (Agreement at ¶¶ 1.44, 8.5, 8.7.) Class Members shall be given the opportunity to object
14 to the 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 Plaintiffs respectfully request 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 November 17, 2023.

25 Dated: June 6, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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