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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 BIANCA CURRY, on behalf of herself and
16 on behalf of all persons similarly situated,

17 Plaintiff,

18 vs.

19 UNITED HEALTH CARE STAFFING,
20 INC., a California Corporation; ON-CALL
21 THERAPISTS, INC., a California
22 Corporation; DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No. CGC-21-597339

[Consolidated with Case No. CGC-22-598120]

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

Hearing Date: May 22, 2023

Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer

Dept: 302

Action Filed: December 28, 2021

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Bianca Curry (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendants
4 United Health Care Staffing, Inc. and On-Call Therapists, Inc. (“Defendants”), and seeks entry of an
5 order: (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
7 were employed by Defendants in California and classified as a non-exempt employee or alleged to have
8 been misclassified as an independent contractor at any time during the Class Period” of December 28,
9 2017 through February 4, 2023; (3) provisionally appointing Plaintiff as the representative of the Class;
10 (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of
11 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the
12 form and method for providing class-wide notice; (6) directing that notice of the proposed settlement
13 be given to the Class; (7) appointing ILYM Group as the Administrator; and (8) scheduling a final
14 approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry of the
15 Judgment, and Plaintiff’s motion for approval of attorneys’ fees and expenses. Plaintiff and Defendants
16 (collectively the “Parties”) have reached a full and final settlement of the above-captioned action, which
17 is set forth in the Class Action and PAGA Settlement Agreement (“Agreement”) filed concurrently with
18 the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
19 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

20 As consideration for this Settlement, the Gross Settlement Amount is Seven Hundred Thousand
21 Dollars (\$700,000) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement
22 Amount will settle all issues pending in the Action between the Parties and will be made in full and
23 final settlement of the Released Class Claims. The Gross Settlement Amount includes all payments of
24 Individual Class Payments to the Participating Class Members, Administration Expenses Payment,
25 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service
26 Payment, and the PAGA Payment. The Gross Settlement Amount does not include the employer’s

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

1 share of payroll taxes which will be separately paid by Defendants. The Settlement is all-in with no
2 reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶3.

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

5 **\$700,000** (Gross Settlement Amount)

- 6 - \$7,500 (Plaintiff's proposed service award not to exceed \$7,500)
- 7 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 8 - \$233,333 (Class Counsel Fees Payment - not to exceed amount)
- 9 - \$15,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$15,000 (Administration Expenses Payment - not to exceed amount)

11 **\$409,167** (Net Settlement Amount)

12 Based upon 595 Class Members who collectively worked 13,821 Workweeks, the Gross Settlement
13 Amount provides a value of \$1,176 per Class Member and \$50 per Workweek and the Net Settlement
14 Amount provides an average recovery of \$687 per Class Member and a recovery of \$29.50 per
15 Workweek. Decl. Nordrehaug at ¶6.

16 On October 28, 2022, the Parties participated in an all-day mediation session presided over by
17 Louis Marlin, Esq., a respected and experienced mediator of wage and hour class actions. Following
18 this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The
19 Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a
20 substantial monetary payment, and there are substantial litigation and class-certification risks.
21 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement
22 and enter the proposed order submitted herewith.

23 **II. DESCRIPTION OF THE SETTLEMENT**

24 The Gross Settlement Amount is Seven Hundred Thousand Dollars (\$700,000). (Agreement
25 at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1)
26 payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
27 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4)
28 the Class Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment.
(Agreement at ¶ 1.22.) The Gross Settlement Amount does not include Defendants' share of payroll
taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to
Defendants. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

1 Within fifteen (15) days of the Effective Date, Defendants shall deposit the Gross Settlement
2 Amount with the Administrator in 2 parts as follows: (a) 50% within 14 days of the Effective Date; (b)
3 50% within 6 months of the first payment (hereinafter collectively referred to as "Payments").
4 (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class Members
5 along with the other Court-approved distributions shall be made by the Administrator within fourteen
6 (14) days after Defendants fully fund the Gross Settlement Amount. (Agreement at ¶ 5.1.) Decl.
7 Nordrehaug at ¶16.

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

19 Class Members may choose to opt-out of the Settlement by following the directions in the Class
20 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
21 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
22 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
23 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
24 subject to the release of the Released PAGA Claims regardless of their request for exclusion.
25 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
26 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
27 Decl. Nordrehaug at ¶18.

28 A Participating Class Member must cash his or her Individual Class Payment check within 180

1 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
2 be voided and any funds represented by such checks to Children's Advocacy Institute, a Court-approved
3 nonprofit organization or foundation consistent with Code of Civil Procedure Section 384(b) ("Cy Pres
4 Recipient"). The Parties, Class Counsel and Defense Counsel have represented that they have no interest
5 or relationship, financial or otherwise, with the intended Cy Pres Recipient. (Agreement at ¶ 5.4.) Decl.
6 Nordrehaug at ¶19.

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

10 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
11 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
12 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
13 Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(b).) Subject
14 to Court approval, the Agreement provides for a payment of no more than \$7,500 to the Plaintiff as the
15 Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

16 Subject to Court approval, Fifteen Thousand Dollars (\$15,000) will be paid from the Gross
17 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
18 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
19 the PAGA Payment shall be allocated as follows: 75% (\$11,250) shall be allocated to the Labor
20 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$3,750)
21 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
22 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompany
23 proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug
24 at ¶22.

25 **III. CASE BACKGROUND**

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

1 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
2 in mediation on October 28, 2022 with Louis Marlin, Esq., which after arm's length negotiations,
3 resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

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

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

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

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

1 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

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

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

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

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

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

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

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

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

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

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

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

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendants is
20 Seven Hundred Thousand Dollars (\$700,000). The Settlement is all-in with no reversion to Defendants
21 and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

22 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
23

24
25 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
26 Claims" are "all claims that were alleged, or reasonably could have been alleged, based facts stated in
27 the Operative Complaint which occurred during the Class Period. Except as expressly set forth in this
28 Agreement, Participating Class Members do not release any other claims, including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
insurance, disability, social security, workers' compensation, or claims based on facts occurring outside
the Class Period." (Agreement at ¶¶ 1.38 and 6.2.)

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

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

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

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

24 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
25 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
26 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 595 Class
27 Members who collectively worked 13,821 Workweeks, the Gross Settlement Amount provides a value
28 of \$1,176 per Class Member and \$50 per Workweek and the Net Settlement Amount provides an

1 average recovery of \$687 per Class Member and a recovery of \$29.50 per Workweek. Decl.
2 Nordrehaug, ¶6.

3 The calculations to compensate for the amount due to the Class Members at the time this
4 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
5 mediation. Class Counsel analyzed the data for putative class members and determined the potential
6 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
7 wages due to rounding was \$189,634, the maximum value of the claim for unpaid wages due to off the
8 clock work was potentially \$484,709, the maximum value of the unpaid overtime wages due to the
9 alleged underpayment was \$143,845, the maximum potential damages for unpaid meal premiums were
10 estimated to be \$1,286,700 based upon a 92% violation rate, the maximum potential rest period
11 damages were estimated to be \$1,404,815 based upon the same 92% violation rate, and the maximum
12 potential damages for failure to provide expense reimbursement were calculated to be \$23,190. In total,
13 the damages for the Class were calculated to have a maximum potential total value of \$3,523,893. In
14 addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were
15 between \$592,261 and \$2,461,947, and the maximum value of the potential wage statement penalties
16 were \$271,150.⁴ Decl. Nordrehaug, ¶6.

17 Consequently, the Gross Settlement Amount represents more than 19% of the potential
18 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
19 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
20 risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount
21

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

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

1 of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair
2 and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

3 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
5 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
6 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
7 argued that all work time was properly recorded and paid for and that there was no underpayment of
8 overtime. As to rounding, Defendants argued that its rounding practices were lawful because they were
9 facially neutral. Defendants contended that its meal and rest period policies fully complied with
10 California law and that Defendants' timekeeping system recorded meal periods, paid for missed meal
11 periods, and was not required to record rest periods. As to expenses reimbursement, Defendants
12 contended that it did not fail to provide reimbursement for necessary business expenses and that there
13 were no such expenses that had not already been reimbursed or that claimed expenses were incurred
14 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
15 Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
16 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
17 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to
18 the meal and rest period claims. Defendants also argues that based on its facially lawful practices, they
19 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
20 penalties and/or inaccurate wage statements. If successful, Defendants' defenses could eliminate or
21 substantially reduce any recovery to the Class. While Plaintiff believe that these defenses could be
22 overcome, Defendants maintains these defenses have merit and therefore present a serious risk to

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

1 recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

15 After arm's length negotiations between experienced and informed counsel, the Parties
16 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
17 \$700,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 All individuals who were employed by Defendants in California and classified as a
27 non-exempt employee or alleged to have been misclassified as an independent contractor
28 at any time during the Class Period.

(Agreement at ¶ 1.5.)

The "Class Period" is from December 28, 2017 through February 4, 2023. (Agreement at ¶ 1.13.)

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

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

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

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

14 While Defendants reserve all rights to dispute that the Plaintiff can satisfy these requirements,
15 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case
16 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of this
17 settlement only. (Agreement at ¶ 2.8.)

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

19 Plaintiff brings this Action on behalf of a Class of individuals who worked for Defendants
20 during the applicable Class Period. Plaintiff asserts that all of these individuals are ascertainable
21 because the class members can readily be determined through examination of Defendants’ files. Given
22 that the Class consists of approximately 595 members, Plaintiffs maintain that numerosity is clearly
23 satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently
24 numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies
25 numerosity requirement.) Here, Plaintiff asserts that the 595 individuals who comprise the Class can
26 be identified based on Defendants’ records and are sufficiently numerous for class certification. Decl.
27 Nordrehaug at ¶30.

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

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

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

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

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

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

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

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

1 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality
2 requirement is met as to the common issues presented in this case. Defendants dispute typicality but
3 Defendants do not oppose a finding of typicality for purposes of this Settlement only.

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

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

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

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

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

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

Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims
as pled by the Plaintiff. While Defendants dispute that class treatment is superior, Defendants do not

1 dispute a finding of superiority in this action for purposes of this Settlement only.

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

3 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
4 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
5 upon procedures by which the Class Members will be provided with written notice of the Settlement
6 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
7 Agreement, Defendants will provide to the Administrator a confidential electronic spreadsheet
8 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
9 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
10 current mailing address information available. (Agreement at ¶ 8.4(b).) A Spanish translation of the
11 Class Notice will be included in the mailing. (Agreement at ¶¶ 1.11 and 8.4(b).)

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

20 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
21 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit an
22 objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object
23 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
24 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
25 out will automatically receive a payment of their Individual Class Payment. This notice program was
26 designed to meaningfully reach the Class Members and it advises them of all pertinent information
27 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
28 satisfies the requirements of due process and is the best notice practicable under the circumstances and

1 complies with Rules of Court 3.766 and 3.769(f).

2 **VII. CONCLUSION**

3 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
4 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
5 fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary
6 Approval, which Plaintiff proposes to be October 11, 2023.

7 Dated: April 25, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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