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

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

Plaintiff,

vs.

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

Defendants.

Case No. CGC-21-597339

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

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

Hearing Date: August 20, 2024
Hearing Time: 9:00 a.m.

Judge: Hon. Curtis E.A. Karnow
Dept: 611

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

21 As consideration for this Settlement, the Gross Settlement Amount is Seven Hundred Thousand
22 Dollars (\$700,000) to be paid by Defendant, as set forth in the Agreement. The Gross Settlement
23 Amount will settle all issues pending in the Action between the Parties and will be made in full and
24 final settlement of the Released Class Claims. The Gross Settlement Amount includes all payments of
25 Individual Class Payments to the Participating Class Members, Administration Expenses Payment,
26 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service

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

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

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

6 **\$700,000** (Gross Settlement Amount)

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

9 **\$409,167** (Net Settlement Amount)

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

14 The Agreement contains appropriate terms which have been previously approved by this Court
15 and Courts throughout California. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class Notice
16 also provides the required protections for the Class to opt out, object or dispute their workweeks. (See
17 Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The specific details of the Settlement are addressed in
18 the Decl. Nordrehaug at ¶¶ 15-22. As set forth in the accompanying proof of service, the LWDA has
19 been served with this motion and the Agreement.

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

27 **II. CORRECTIONS TO THE SETTLEMENT AND THE MOTION**

28 In accordance with this Court's Order denying the initial motion for preliminary approval, the

1 Parties have prepared the revised Agreement and have provided the request additional information in
2 the Declaration of Nordrehaug filed herewith. In particular, the following revisions and/or
3 supplementations were made:

4 1. Kullar Valuation - The specific details about the valuation of the class claims are
5 explained in the Declaration of Nordrehaug at paragraphs 6(A) through 6(K).

6 2. Risks of Litigation - More specific explanations of the risks of litigation and class
7 certification of the claims are set forth in the Declaration of Nordrehaug at paragraphs 24(A) and 25(A).

8 3. Settlement Funding - The first payment of 50% of the Gross Settlement Amount is to
9 be made by Defendants within 14 days of the Effective Date, and the second 50% of the Gross
10 Settlement Amount is to be made within 6 months of the first payment. The two staggered payments
11 were a financial condition of the Defendants in order to pay the amount of \$700,000.

12 4. Settlement Distribution - The Agreement has been revised at paragraph 5.1 to make
13 clear that payment of the Administration Expenses Payment, the Class Counsel Fees Payment, the Class
14 Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall occur at the
15 same time as the distribution of settlement funds to the Class and to the Aggrieved Employees. The
16 Parties did not elect to make partial distributions for a few reasons. First, the Administration Expenses
17 would nearly double as the result of two check distributions and that would reduce the overall recovery
18 to the Class. Second, six months is not so far apart that this additional expense need be incurred. Third,
19 the likelihood of receipt and cashing of checks is always higher when there is a single check of higher
20 dollar value.

21 5. PAGA - Further detail as to the PAGA claims, valuation and allocation is provided in
22 the Declaration of Nordrehaug at paragraph 33.

23 6. Service Award - The service award amount is a not to exceed amount, with the final
24 award to be determined at final approval after Class Members have had the opportunity to comment.
25 For purposes of preliminary approval, the Court determines whether the proposed settlement is within
26 the "range of reasonableness" that would warrant sending out a notice of the settlement and giving the
27 class members the opportunity to object. (Newberg on Class Actions, 3d Ed. (1992) § 11.25). Here,
28 the examples of what other Courts have awarded in excess of \$7,500 was intended to show that the not

1 to exceed amount for the service award in the Agreement was within the “range of reasonableness” in
2 light of other awards. Further explanation is set forth in the Declaration of Nordrehaug at paragraphs
3 35 and 36.

4 7. Attorneys’ Fees - Plaintiff understands what the Court requires at final approval to
5 approve an award of attorneys’ fee. At final approval, the lodestar cross-check will establish that the
6 requested award is reasonable when viewed by a lodestar cross-check.

7 8. Tax Allocation - The Individual Class Payments to Class Members are to be allocated
8 20% for wages and 80% for non-wages, which includes statutory penalties, expenses reimbursement
9 and interest. (Agreement at ¶ 3.2(e)(i).) This allocation was negotiated between the Parties and were
10 based upon the relative values of the claims as measured by the Parties respective views on the viability
11 of such claims. Plaintiff believed that the claims for missed meal and rest breaks and off-the-clock
12 work would be difficult to establish on class wide basis. By contrast, Plaintiff believed that the expense
13 reimbursement and penalties claims were more easily established and could reasonably result full
14 recovery of the calculated value of the claims asserted, putting aside the Court’s good faith defense.
15 The allocation is also reinforced by the fact that the waiting time penalties had the highest potential
16 maximum recovery of any claim. This resulted in an agreement that the majority of the recovery be
17 allocated to these non-wage recoveries, which Plaintiff accepted in light of Plaintiff’s experience that
18 Class Members want a significant percentage of their recovery to be reported on 1099 because of their
19 preference for a recovery without withholdings and other employee-side deductions. The Individual
20 PAGA Payments are allocated entirely to penalties. (Agreement at ¶ 3.2(d)(ii).)

21 9. Agreement - The Agreement as been revised at paragraph 1.38 in accordance with the
22 Court’s order. The Agreement was also revised at paragraph 8.4 to provide for the emailing of Class
23 Notice to the extent email addresses are available, in addition to the mailing of the Class Notice.

24 10. Proposed Preliminary Approval Order - The Proposed Preliminary Approval Order has
25 been revised in accordance with this Court’s Order.

26 11. Class Notice - The Class Notice has been revised in accordance with this Court’s Order.
27 Along with the other typographical corrections noted by the Court, the Class Notice has been revised
28 to display the Administrator’s website for this Settlement on page 1, and to reflect only the

1 Administrator's website throughout for the posting of documents to alleviate the Court's concern of
2 confusion regarding multiple web sites.

3 **III. CASE BACKGROUND**

4 The description of the case and claims, along with the procedural history, is set forth in the
5 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
6 exchange of documents and information in connection with the Action which permitted Class Counsel
7 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
8 in mediation on October 28, 2022 with Louis Marlin, Esq., which after arm's length negotiations,
9 resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

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

1 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 to
18 voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's Federal*
19 *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 such
10 as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720
11 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988);
12 *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 before
5 an experienced and well-respected mediator. Defendants have expressly denied and continue to deny
6 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
7 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
8 Claims of the Class in accordance with this Settlement.³

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

17 The Parties attended an arms-length mediation session with Louis Marlin, a respected and
18 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
19 for the mediation, Defendants provided Class Counsel with necessary information for the members of
20 the Class, including a sampling of time punch records, payroll data and data concerning the composition
21 of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and
22 prepared and submitted a mediation brief and damage valuation to the Mediator. Following this all-day
23 mediation, the Parties agreed to this Settlement. The final settlement terms were negotiated and set

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 forth in the Agreement now presented for this Court’s approval. Decl. Nordrehaug at ¶ 5. Importantly,
2 Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

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

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

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

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

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

3 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
4 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
5 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 595 Class
6 Members who collectively worked 13,821 Workweeks, the Gross Settlement Amount provides a value
7 of \$1,176 per Class Member and \$50 per Workweek and the Net Settlement Amount provides an
8 average recovery of \$687 per Class Member and a recovery of \$29.50 per Workweek. Decl.
9 Nordrehaug, ¶6.

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

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

1 set forth in the accompanying Declaration of Nordrehaug at paragraphs 6(A) through 6(K).

2 Consequently, the Gross Settlement Amount represents more than 19% of the potential
3 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
4 full at trial.⁵ Importantly, the recent decision that good faith belief of compliance by the employer in
5 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the
6 claims for waiting time and wage statement penalties, even if wages were owed to the Class. The above
7 maximum calculations should then be adjusted in consideration for both the risk of class certification
8 and the risk of establishing class-wide liability on all claims. Further detail of these risks are set forth
9 in the accompanying Declaration of Nordrehaug at paragraphs 6(A) through 6(K). Given the amount
10 of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair
11 and reasonable.⁶ Decl. Nordrehaug, ¶6.

12 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
14 Defendants present serious threats to the claims of the Plaintiff and the other Class Members.
15 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
16 argued that all work time was properly recorded and paid for and that there was no underpayment of
17 overtime. As to rounding, Defendants argued that its rounding practices were lawful because they were
18 facially neutral. Defendants contended that its meal and rest period policies fully complied with
19 California law and that Defendants' timekeeping system recorded meal periods, paid for missed meal
20 periods, and was not required to record rest periods. As to expenses reimbursement, Defendants

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

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

1 contended that it did not fail to provide reimbursement for necessary business expenses and that there
2 were no such expenses that had not already been reimbursed or that claimed expenses were incurred
3 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
4 Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
5 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
6 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to
7 the meal and rest period claims. Defendants also argues that based on its facially lawful practices, they
8 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
9 penalties and/or inaccurate wage statements. See e.g. *Naranjo*, 15 Cal. 5th at 1065 ("if an employer
10 reasonably and in good faith believed it was providing a complete and accurate wage statement in
11 compliance with the requirements of section 226, then it has not knowingly and intentionally failed to
12 comply with the wage statement law.") If successful, Defendants' defenses could eliminate or
13 substantially reduce any recovery to the Class. While Plaintiff believe that these defenses could be
14 overcome, Defendants maintains these defenses have merit and therefore present a serious risk to
15 recovery by the Class. Decl. Nordrehaug, ¶ 24. Further explanation of these risks are set forth in the
16 accompanying Declaration of Nordrehaug at paragraph 24(A).

17 There was also a significant risk that, if the Actions were not settled, Plaintiff would be unable
18 to obtain class certification and thereby not recover on behalf of any employees other than himself.
19 Defendants argued that the individual experience of each putative class member varied with respect to
20 the claims. Defendants could also contest class certification by arguing injury and good faith were case-
21 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
22 certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
23 (denying certification of rest break claims). Defendants also contended that it would be able to establish
24 that Plaintiff was not a typical or adequate class representative as to some, if not all, of the alleged
25 claims. Finally, even if class certification was successful, as demonstrated by the California Supreme
26 Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles
27 to overcome for a class wide recovery even where the class has been certified. While other cases have
28 approved class certification in wage and hour claims, class certification in this action would have been

hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25. Further explanation of these risks are set forth in the accompanying Declaration of Nordrehaug at paragraph 25(A).

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

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

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

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

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

At final approval Plaintiff will apply to the Court for Class Representative Service Payment in consideration for her service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff performed her duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. Plaintiff will present a detailed declaration addressing her work and service at the time of final approval. For purposes of this preliminary approval stage, the requested service award of \$7,500 is well within the accepted range of reasonableness for purposes of preliminary approval in light of significantly higher awards approved by other Courts. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.)*,

1 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
2 payment was \$351). As explained in *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal.
3 2007) where the Court approved a \$25,000 award, service awards are routinely awarded to class
4 representatives to compensate the employees for the time and effort expended on the case, for the risk
5 of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to
6 vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

28 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
observed, however, '[i]n the context of class action settlements, 'formal discovery is not

1 a necessary ticket to the bargaining table' where the parties have sufficient information
2 to make an informed decision about settlement.'"

3 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
4 213 F.3d at 459).

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

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

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

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

17 (Agreement at ¶ 1.5.)

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

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

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

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

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

30 While Defendants reserve all rights to dispute that the Plaintiff can satisfy these requirements,
31 the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case

1 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of this
2 settlement only. (Agreement at ¶ 2.8.)

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

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

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

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

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

25 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
26 common questions of whether Defendants properly calculated wages, whether the rounding practices
27 were lawful, whether the Defendants failed to provide all legally required rest periods to class members,
28 whether class members were lawfully compensated for all hours worked, whether Defendants failed to

1 provide required expense reimbursement, and whether Class Members are entitled to damages and
2 penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendants dispute that common
3 questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

21 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
22 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
23 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
24 met here. First, Plaintiff is well aware of her duties as the representative of the class and has actively
25 participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel,
26 provided documents to counsel and participated in the investigation and negotiations in the Action.
27 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
28 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the

1 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
2 the same set of facts and legal theories. Defendants dispute that the adequacy requirement is satisfied
3 but will not oppose such a finding for purposes of this Settlement only.

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

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

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

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

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

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

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

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel

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

8 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
9 the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit an
10 objection. (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object
11 to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval
12 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
13 out will automatically receive a payment of their Individual Class Payment. This notice program was
14 designed to meaningfully reach the Class Members and it advises them of all pertinent information
15 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
16 satisfies the requirements of due process and is the best notice practicable under the circumstances and
17 complies with Rules of Court 3.766 and 3.769(f).

18 VII. CONCLUSION

19 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
20 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
21 fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary
22 Approval, which Plaintiff proposes to be January 14, 2025.

23 Dated: July 25, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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