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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

RACHEL V. CORREIA, an individual;
and on behalf of all others similarly
situated and aggrieved; REBEKAH
MEDINA, an individual; and on behalf of
all others similarly situated and aggrieved;
CARLOS COUSINEAU, an individual;
and on behalf of all others similarly
situated and aggrieved; DANIEL
GARCIA, an individual; and on behalf of
all others similarly situated and aggrieved,

Plaintiff,

vs.

GALLO GLASS COMPANY, a Nevada
corporation; NIGEL DART, an individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE No. CV-21-006459

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

Hearing Date: April 14, 2023
Hearing Time: 10:00 a.m.

Judge: Hon. Sonny S. Sandhu
Dept.: 24

Action Filed: December 1, 2021
Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiffs Rachel Correia, Rebekah Medina, Carlos Cousineau, and Daniel Garcia (“Plaintiffs”)
3 respectfully submit this memorandum in support of the unopposed motion for preliminary approval of
4 the proposed class action settlement with Defendants Gallo Glass Company and Nigel Dart
5 (“Defendants”), and seeks entry of an order: (1) preliminarily approving the proposed settlement of this
6 class action with Defendants; (2) for settlement purposes only, conditionally certifying the Class, which
7 is comprised of “all current and former employees of Defendant Gallo Glass Company who worked for
8 Gallo Glass Company in the State of California, while classified as non-exempt, at any time during the
9 Class Period”; (3) provisionally appointing Plaintiffs as the representatives of the Class; (4)
10 provisionally appointing David D. Bibiyan, Jeffrey D. Klein, Sarah H. Cohen and Vedang J. Patel of
11 Bibiyan Law Group, P.C., and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Jeffrey
12 S. Herman and Sergio J. Puche of Blumenthal Nordrehaug Bhowmik de Blouw LLP as Class Counsel;
13 (5) approving the form and method for providing class-wide notice; (6) directing that notice of the
14 proposed settlement be given to the class; (7) appointing Phoenix Settlement Administrators as
15 Settlement Administrator, and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion
16 for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of
17 attorneys’ fees and expenses. Plaintiffs and Defendants (collectively the “Parties”) have reached a full
18 and final settlement of the above-captioned action, which is embodied in the Class Action and PAGA
19 Action Settlement Agreement (hereinafter “Settlement,” “Settlement Agreement,” or “Agreement”)
20 filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1
21 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

22 As consideration for the Release of Claims in this Class and PAGA Representative Action
23 Settlement, Defendant Gallo Glass Company, on behalf of Defendants, will pay the Gross Settlement
24 Amount of Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000) (the “Gross
25 Settlement Amount”), as set forth in the Agreement. The Gross Settlement Amount will settle, fully
26 and finally, all issues pending in the Action between the Parties as set forth in the Release of Claims
27

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

1 in this Class and PAGA Representative Action. As set forth below, the Gross Settlement Amount will
2 cover: (a) the costs of administration of the settlement, (b) all Class Counsel attorneys' fees and
3 litigation expenses, (c) Plaintiffs' Service Payments, (d) the PAGA Settlement Amount paid to the
4 LWDA and the Aggrieved Employees, and (e) the remainder known as the Net Settlement Amount, for
5 payments to Class Members. (Agreement at ¶ 12.) The Gross Settlement Amount does not include the
6 employer's share of payroll taxes which will be separately paid by Defendant Gallo Glass Company.
7 (Id.) The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.
8 Nordrehaug at ¶3.

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

11	\$3,820,000 (Gross Settlement Amount)
12	- \$40,000 (Plaintiffs' proposed Service Awards not to exceed \$10,000 each)
13	- \$30,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
14	- \$1,273,333 (Class Counsel Fees Payment - not to exceed amount)
	- \$100,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
	- \$25,000 (Settlement Administration Expenses - not to exceed amount)
	\$2,351,667 (Net Settlement Amount)

15 Based upon 945 Class Members who collectively worked no more than 151,296 work weeks, the Gross
16 Settlement Amount provides an average value of \$4,042 per Class Member and \$25 per work week, and
17 after deductions, the remaining Net Settlement Amount provides an average recovery of \$2,488 per
18 Class Member and a recovery of \$15.54 per work week. Decl. Nordrehaug at ¶6.

19 On January 11, 2023, the Parties participated in an all-day mediation session presided over by
20 Jeff Ross, a respected jurist and experienced mediator of wage and hour class actions. The Parties
21 agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized
22 in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair,
23 reasonable and adequate, and should be preliminarily approved because there is a substantial monetary
24 payment, and there are significant litigation and class-certification risks. Therefore, Plaintiffs
25 respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed
26 order submitted herewith.

27 **II. DESCRIPTION OF THE SETTLEMENT**

28 The Gross Settlement Amount is Three Million Eight Hundred Twenty Thousand Dollars

1 (\$3,820,000). (Agreement at ¶ 12.) Under the Settlement, the Gross Settlement Amount consists of
2 the following elements: (1) payment of the Individual Class Payments to the Participating Class
3 Members; (2) Class Counsel's Attorney's Fees and Litigation Expenses; (3) Settlement Administration
4 Fees and Expenses; (4) the Service Payments to Plaintiffs; and (5) the PAGA Settlement Amount.
5 (Agreement at ¶ 12.) The Gross Settlement Amount does not include Defendant Gallo Class
6 Company's share of payroll taxes. (Agreement at ¶ 41.) The Gross Settlement Amount shall be all-in
7 with no reversion to Defendants. (Agreement at ¶ 41.) Decl. Nordrehaug at ¶15.

8 Within fourteen (14) days of the Effective Date, Defendant Gallo Glass Company shall deposit
9 the Gross Settlement Amount with the Settlement Administrator. (Agreement at ¶ 60(b).) Thereafter,
10 the distribution of Individual Class Payments to Participating Class Members shall be made by the
11 Settlement Administrator within seven (7) days after the Gross Settlement Amount is funded.
12 (Agreement at ¶ 60(c).) Decl. Nordrehaug at ¶16.

13 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
14 amounts for Plaintiffs' Service Payments, Class Counsel's Attorneys' Fees and Litigation Expenses, the
15 Settlement Administrator's fees and expenses, and the PAGA Settlement Amount (called the "Net
16 Settlement Amount") shall be allocated to Class Members as their Individual Class Payments.
17 (Agreement at ¶¶ 17 and 46(a).) Each Participating Class Member will receive a pro rata share of the
18 Net Settlement Amount based on the number of Workweeks that he or she worked in each position
19 covered by the Settlement during the Class Period (the "Individual Class Payment"), calculated as
20 follows: (Class Member's Workweeks worked ÷ Class Workweeks worked by all Participating Class
21 Members during the Class Period) × Net Settlement Amount = Participating Class Member's Individual
22 Class Payment. (Agreement at ¶ 46(a).) Workweeks will be based on Defendant's records, however
23 Class Members will have the right to challenge the number of workweeks. Decl. Nordrehaug at ¶17.

24 Class Members may choose to opt-out of the Settlement by following the directions in the Class
25 Notice. (Agreement at ¶ 54(b), Ex. A.) All Class Members who do not "opt out" will be deemed
26 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
27 Individual Class Payment. (Agreement at ¶ 54(b).) All Aggrieved Employees, including those who
28 submit an opt-out request, will still be paid their allocation of the PAGA Settlement Amount and will

1 remain subject to the release of the PAGA claims regardless of their request for exclusion from the
2 Class. (Agreement at ¶¶ 46(b) and 51.) Finally, the Notice will advise the Class Members of their right
3 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶ 55 and Ex. A.) Decl.
4 Nordrehaug at ¶18.

5 A Participating Class Member must cash his or her Individual Class Payment check within 180
6 days after it is mailed. (Agreement at ¶ 61.) Any settlement checks not cashed within 180 days will
7 be voided and any funds from such uncashed checks will be paid to the California Controller's
8 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
9 to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 61.)
10 Decl. Nordrehaug at ¶19.

11 Subject to Court approval, the Parties have agreed on Phoenix Settlement Administrators to
12 administer the settlement in this action ("Settlement Administrator"). (Agreement at ¶ 29.) The
13 Settlement Administrator will be paid for settlement administration in an amount estimated to be
14 \$25,000. (Agreement at ¶ 44.) Decl. Nordrehaug at ¶20.

15 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
16 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
17 at ¶ 42.) Class Counsel will also be allowed to apply separately for an award of Class Counsel
18 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ 42.) Subject to
19 Court approval, the Agreement provides for a payment of no more than \$10,000 to each Plaintiff as his
20 or her Service Payment. (Agreement at ¶ 43.) Decl. Nordrehaug at ¶21.

21 Subject to Court approval, One Hundred Thousand Dollars (\$100,000) will be paid from the
22 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
23 Labor Code Section 2698, *et seq.* ("PAGA"). (Agreement at ¶25.) Pursuant to the express requirements
24 of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% (\$75,000) shall be
25 allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and
26 25% (\$25,000) allocated to the Individual PAGA Payments to be distributed to the Aggrieved
27 Employees based on the number of their respective pay periods worked during the PAGA Period.
28

(Agreement at ¶¶ 16 and 46(b).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

The description of the case and claims, along with the procedural history is set forth in the Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action over more than a year which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on January 11, 2022 with Jeff Ross, which after arms' length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

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

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

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

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F. 2d 616, 621 n.3 (7th 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
15 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether
16 a proposed settlement is fair, reasonable and adequate. That final determination is made only after
17 notice of the settlement has been given to the class members and after they have been given an
18 opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore,
19 *Moore's Federal Practice* §§23.80 - 23.85 (2003).

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal. App. 4th at 239-40;
23 *Dunk, supra*, 48 Cal. App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement
24 is 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. Plaintiffs and Class
7 Counsel have determined that it is desirable and beneficial to the Class to resolve the claims of the Class
8 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[Declaration of David Bibiyan at ¶¶ 2-10.

13 _____
14 ³ The release applicable to the Participating Class Members is appropriately tethered to allegations
15 in the Action, as it is limited to: "any and all claims that were alleged, or that reasonably could have
16 been alleged based on the facts asserted, in the Operative Complaint, for the duration of the Class
17 Period. This includes statutory, constitutional, contractual or common law claims for wages, damages,
18 unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees,
19 litigation costs, restitution, or equitable relief, that were alleged or reasonably could have been alleged
20 based on the facts asserted in the Operative Complaint for violations of the California Labor Code,
21 California Industrial Welfare Commission Wage Orders, and California Business and Professions Code
22 § 17200, et seq. for the following categories of allegations, to the fullest extent such claims are
23 releasable by law: (a) all claims for failure to pay wages, including overtime premium pay and the
24 minimum wage; (b) all claims for the failure to provide meal and/or rest periods in accordance with
25 applicable law, including payments equivalent to one hour of the employee's regular rate of pay for
26 missed, short or late meal and/or rest periods and alleged non-payment of wages for meal periods
27 worked and not taken; (c) all claims for the alleged omission of any kind of remuneration when
28 calculating an employee's regular rate of pay; (d) all claims for the alleged failure to pay compensation
at employees' final rate of pay for unused vested paid vacation days; (e) all claims for the alleged failure
to indemnify and/or reimburse employees for any business expenses; (f) all claims for failure to
maintain required records; (g) all claims for failure to issue compliant wage statements; (h) all claims
for failure to issue timely payment of wages during, and upon termination of, employment; (i) all claims
for engaging in unfair business practices; and (j) all associated claims for civil and statutory penalties.
The Class Members understand and agree that this release includes a good-faith compromise of disputed
wage claims. The 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 ¶ 50.)

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

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

15 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
16 Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000). The Settlement is all-in with no
17 reversion to Defendants and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

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

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

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

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

15 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
16 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
17 receive payment according to the same formula. (Agreement at ¶ 46(a).) After the proposed deductions
18 are made from the Gross Settlement Amount, the remaining Net Settlement Amount to be distributed
19 to Class Members provides an average recovery of \$2,488 per Class Member and \$15.54 per work
20 week. Decl. Nordrehaug, ¶6.

21 The calculations to compensate for the amount due for the Class at the time of the mediation
22 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
23 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
24 wages for the employees. The maximum potential damages were calculated to be \$929,304 for the
25 alleged unpaid wages due to off the clock work, \$9,662,167 for alleged meal period damages based
26 upon a 64% violation rate potentially found in the time punch records and after deducting premiums
27 paid by Defendants, \$8,657,004 for alleged rest period damages based upon the alleged 100% violation
28 rate, and \$168,655 for the alleged unreimbursed business expenses. Therefore, it was calculated that

1 Defendants were subject to a maximum damage claim in the amount of \$19,417,130. As to potential
2 penalties, Plaintiffs calculated that wage statement penalties were a maximum of \$3,150,100 and
3 potential waiting time penalties were \$3,011,667.⁴ Defendants vigorously disputed Plaintiffs'
4 calculations and exposure theories. Decl. Nordrehaug, ¶6.

5 Consequently, the Gross Settlement Amount of \$3,820,000 represents more than 19% of the
6 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated,
7 assuming these amounts could all be proven in full at trial.⁵ The above maximum calculations should
8 then be adjusted in consideration for both the risk of class certification and the risk of establishing class-
9 wide liability on all claims. Given the amount of the settlement as compared to the potential value of
10 claims in this case and the defenses asserted by Defendants, this settlement is fair and reasonable.⁶
11 Clearly, the goal of this litigation has been met. 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

15 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
16 226, at mediation, Plaintiff recognized that these claims were subject to additional, separate defenses
17 asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for
18 meal or rest periods or other wages were owed given Defendants' position that Plaintiffs were properly
19 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.").

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

22 ⁶ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
23 settlement where the settlement amount constituted approximately 25% of the estimated overtime
24 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
25 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v.*
26 *Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F. 3d 454, 459 (9th Cir. 2000) (affirming approval of
a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D.
28 Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%"
of maximum valuation).

1 Defendants present serious threats to the claims of the Plaintiffs and the other Class Members.
2 Defendants asserted that Defendants' practices complied with all applicable Labor laws. Defendants
3 maintained that Labor Code §514 barred wage claims on behalf of union employees and union
4 employees constitute the vast majority of the Class. Defendants argued that all work time was paid for
5 and that the regular rate was properly calculated when paying wages. Defendants contend that their
6 meal and rest period policies fully complied with California law and that Defendants' timekeeping
7 system recorded meal periods, and was not required to record rest periods. Defendants established that
8 they paid some meal period premiums which could be argued as evidence of lawful practices. As to
9 expenses reimbursement, Defendants contended that they did not fail to pay for business expenses and
10 any cell phone usage was merely convenient and voluntary such that reimbursement was not legally
11 required. Finally, Defendants could argue that the Supreme Court decision in *Brinker v. Superior*
12 *Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability
13 as to the meal and rest period claims. Defendants also argues that based on their facially lawful
14 practices, they acted in good faith and without willfulness, which if accepted would negate the claims
15 for waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could
16 eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses
17 could be overcome, Defendants maintain these defenses have merit and therefore present a serious risk
18 to recovery by the Class. Decl. Nordrehaug, ¶ 24.

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

28 After arm's length negotiations between experienced and informed counsel, the Parties

1 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
2 \$3,820,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

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

9 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F. 3d 454, 458
10 (9th Cir. 2000)).

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

13 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
14 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
15 Members are all determined under a neutral methodology. Each Participating Class Member will
16 receive the same opportunity to participate in and receive payment through a neutral formula that is
17 based upon the Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

18 Plaintiffs will apply to the Court for Service Payments in consideration for their service and for
19 the risks undertaken on behalf of the class. (Agreement at ¶ 43.) Plaintiffs performed their duties
20 admirably by working with Class Counsel for more than year. The declarations of the Plaintiffs will
21 be presented at the time of final approval in support of the requested awards. Decl. Nordrehaug at ¶27.
22 At this stage, the requested service award of \$10,000 is well within the accepted range of awards for
23 purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS
24 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
25 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
26 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*,
27 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six
28 plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. Jan.
29 27 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in
30 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
31 to compensate the employees for the time and effort expended on the case, for the risk of litigation, for

1 the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the
2 statutory rights of all employees. 2007 WL 221862 at *16-17.

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

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

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

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

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

27 All current and former employees of Defendant Gallo Glass Company who worked for
28 Gallo Glass Company in the State of California, while classified as non-exempt, at any
time during the Class Period.

1 (Agreement at ¶ 5.)

2 The Class Period is from December 1, 2017 through the earlier of: (1) the date the Court grants
3 preliminary approval of this Settlement; or (2) the exhaustion of 151,296 Workweeks . (Agreement at
4 ¶ 6.)

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

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

9 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
10 of a common or general interest, of many persons, or when the parties are numerous, and
11 it is impracticable to bring them all before the court....” The party seeking certification
12 has the burden to establish the existence of both an ascertainable class and a well-
13 defined community of interest among class members. (*citations omitted*). The
14 “community of interest” requirement embodies three factors: (1) predominant common
15 questions of law or fact; (2) class representatives with claims or defenses typical of the
16 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 Plaintiffs 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
17 settlement only. (Agreement at ¶ 70.)

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

19 Plaintiffs bring this Action on behalf of a Class of non-exempt employees of Defendant Gallo
20 Glass Company during the Class Period. Plaintiffs assert 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 945 members, Plaintiffs maintain that numerosity is clearly satisfied. *See*
23 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955) (class with 10 members sufficiently numerous); *Rose*
24 *v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (class of 48 members satisfies numerosity
25 requirement.) Here, Plaintiffs assert that the 945 current and former employees that comprise the Class
26 can be identified based on Defendants’ records and are sufficiently numerous for class certification.
27 Decl. Nordrehaug at ¶30.
28

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

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

7 Commonality exists if there is a predominant common legal question regarding how an
8 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
9 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
10 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
11 certification stage since the question is “essentially a procedural one that does not ask whether an action
12 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

13 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
14 common questions of whether Defendants’ employment practices were lawful, whether Defendants
15 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
16 compensated for all hours worked, whether Defendants failed to provide required expense
17 reimbursement, and whether Class Members are entitled to damages and penalties as a result of these
18 practices. Plaintiffs contend that certification of this Class is appropriate because Defendants allegedly
19 engaged in uniform practices with respect to the Class Members. As a result, these common questions
20 of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendants dispute that
21 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

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

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

1 In the instant case, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs,
2 like every other member of the Class, were employed by Defendants as non-exempt employees, and,
3 like every other member of the Class, was subject to the same employment practices. Plaintiffs, like
4 every other member of the Class, also claims owed compensation as a result of the Defendants' uniform
5 policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from the same
6 course of conduct by Defendants, involve the same issues, and are based on the same legal theories.
7 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs asserts that the typicality requirement
8 is met as to the common issues presented in this case. Defendants dispute that Plaintiffs meet the
9 typicality requirement, but do not oppose a finding of typicality for purposes of this Settlement only.

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

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

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

27 To certify a class, the Court must also determine that a class action is superior to other available
28 methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of

1 common issues will reduce litigation costs and promote greater efficiency, a class action may be
2 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
3 1996). As courts have previously observed:

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

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

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

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

15 The Court has broad discretion in approving a practical notice program. The Parties have agreed
16 upon procedures by which the Class Members will be provided with written notice of the Settlement
17 similar to that approved and utilized in hundreds of class action settlements. In accordance with the
18 Agreement, Defendant Gallo Glass Company will provide to the Settlement Administrator a
19 confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 53.) Within 14 days
20 after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via
21 first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 53.)

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

The Class Notice will state that the Class Members shall have forty-five (45) days from the date

1 that the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement
2 at ¶ 54.) Copies of the proposed Objection form and Request for Exclusion form are attached to the
3 Agreement as Exhibits B and C, respectively. Class Members shall be given the opportunity to object
4 to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval
5 Hearing. (Agreement at ¶ 54.) Class Members who do not submit a timely and proper request to opt-
6 out will automatically receive a payment of their Individual Class Payment. This notice program was
7 designed to meaningfully reach the Class Members and it advises them of all pertinent information
8 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
9 satisfies the requirements of due process and is the best notice practicable under the circumstances and
10 complies with Rules of Court 3.766 and 3.769(f).

11 **VII. CONCLUSION**

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

15 Dated: March 16, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

17 By: /s/ Kyle Nordrehaug
18 Kyle R. Nordrehaug, Esq.
19 Attorney for Plaintiffs
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